STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

TEAMSTERS LOCAL 214,
Labor Organization-Respondent,

Case No. CU13 I-037
-and- Docket No. 13-011918-MERC

PAULINE BEUTLER,
An Individual-Charging Party.
_____/

APPEARANCES:

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

Wayne A. Rudell, P.L.C., by Wayne A. Rudell, for Respondent

DECISION AND ORDER

On October 3, 2014, Administrative Law Judge (ALJ) David M. Peltz issued his Decision and Recommended Order in the above matter finding that Charging Party Pauline Beutler failed to establish that Respondent, Teamsters Local 214 (Union) violated § 10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210. The ALJ concluded that the Legislature's placement of the list of prohibited conduct in § 9(2) of PERA, rather than § 10, evidenced the Legislature's intent to have violations of the "right to refrain" provision added by 2012 PA 349 (Act 349) to be addressed in a forum other than an unfair labor practice proceeding. The ALJ determined that the evidence in the record does not support Charging Party's allegation that Respondent refused to permit Charging Party to resign from the Union and also fails to support the allegation that Respondent unlawfully denied Charging Party's request to end dues payments. The ALJ noted that because the record did not include evidence that Respondent prevented Charging Party from resigning from her membership in the Union, or that its conduct impacted the terms and conditions of her employment, Charging Party failed to state a valid, remediable claim under § 10 of PERA. The ALJ further concluded that there was no violation of PERA because the dues check-off agreement signed by Charging Party expressly provided that her authorization was voluntary and not conditioned on her membership in the Union. The Decision and Recommended Order of the ALJ was served on the interested parties in accordance with § 16 of PERA.

After requesting and receiving an extension of time, Charging Party filed exceptions to the ALJ's Decision and Recommended Order, a supporting brief, and a request for oral argument on November 24, 2014. After being granted an extension of

time, Respondent filed its brief in support of the ALJ's Decision and Recommended Order on January 5, 2015.

In her exceptions, Charging Party argues that the ALJ erred by concluding that the Commission does not have jurisdiction to hear the case. Charging Party states that the ALJ further erred by: (1) failing to conclude that the Union's refusal to accept her revocation of her agreement to pay union dues was a violation of the right to refrain; (2) concluding that Charging Party clearly and unmistakably waived her right to refrain from financially supporting the Union; (3) permitting the Union to impose window periods on resignations from union membership; and (4) failing to consider Charging Party's argument that 2012 PA 53 (Act 53) invalidated Charging Party's check-off card.

Charging Party has requested oral argument in this matter. After reviewing her exceptions and the briefs filed by both parties, we find that oral argument would not materially assist us in deciding this case. Therefore, Charging Party's request for oral argument is denied.

Upon reviewing the record carefully and thoroughly, we find some merit to Charging Party's exceptions and modify the ALJ's decision in part.

Factual Summary:

We adopt the findings of fact as set forth in the ALJ's Decision and Recommended Order and will not repeat them here, except as necessary. Charging Party has been employed as a bus driver by a public school employer, the Livingston Educational Service Agency (Employer), since July 1, 2010. She is a member of a bargaining unit represented by Respondent. Respondent and the Employer had no collective bargaining agreement covering that unit until they entered into an agreement which was effective September 14, 2011 and expired on June 30, 2013. That agreement contained a union security clause, which provided in relevant part:

> Membership in the Union is not compulsory. Regular employees have the right to join, not join, maintain, or drop their membership in the Union, as they see fit. Neither party shall exert any pressure on or discriminate against any employee with regards to such matters.
>
> All employees in the bargaining unit recognized by this contract shall, as a condition of continued employment, pay the Union, the employee's exclusive collective bargaining representative, an amount of money equal to that paid by other employees in the bargaining unit who are members of the Union and limited to a legally permissible amount of money not to exceed the union's regular and usual dues. Such payment shall commence for probationary employees with the first pay thirty (30) days after the date of employment. If, during the term of this Agreement, it shall be determined by a court of competent jurisdiction that the foregoing amount is unlawful, the amount shall be modified to such amount as is lawful.

> During the period of time covered by this Agreement, the Employer agrees to deduct from the pay of any employee all dues and/or initiation fees of the Union and pay such amount to the Union; provided, however, that the Union presents to the Employer authorizations signed by such employee allowing such deductions and payment to the Union.

Charging Party signed an application for membership and a Checkoff Authorization and Assignment for Respondent on September 21, 2011. The application, signed by Charging Party provided, "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 her to object to paying the pro rata portion of regular union dues that is not germane to collective bargaining, contract administration, and grievance adjustment and thereby reducing her monthly obligation to the pro rata portion of regular union dues or fees solely attributable to the cost of collective bargaining, contract administration, and grievance adjustment. The Checkoff Authorization and Assignment signed by Charging Party authorizing her employer to deduct her monthly union dues from her 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 explained by the ALJ, 2012 PA 53 amended PERA to make it unlawful for a public school employer to collect union dues or service fees from the wages of public school employees for the benefit of labor organizations, and became effective March 16, 2012. However, where the public school employer collected dues or service fees pursuant to a collective bargaining agreement that was in effect on the effective date of Act 53, the prohibition did not apply until the contract expired. The collective bargaining agreement in place immediately prior to the matter at issue expired on June 30, 2013.

2012 PA 349 (Act 349) amended PERA effective March 28, 2013. Along with other changes to PERA, it removed language from § 10 that formerly made it lawful for a public employer and labor organization to require, as a condition of employment, that all bargaining unit members share fairly in the financial support of their exclusive bargaining representative by paying to the labor organization an agency or service fee. Act 349 also expressly provided that public employees have the right to refrain from union activity.

Around May 2, 2013, Respondent and the Employer entered into a new agreement covering the period of July 1, 2013 through June 30, 2016. This new collective bargaining agreement does not contain a union security clause, nor does it authorize the Employer to deduct union dues or fees from employees' wages.

Charging Party sent a letter dated September 9, 2013, to Respondent's president stating that "per our right to work in Michigan I am opting to leave the teamsters local 214. I would like this to be with no delay. If anything but this letter is needed please inform me at my address." It is undisputed that Charging Party's letter was sent outside any applicable window period for revocation of her dues checkoff authorization. Subsequently, Charging Party received a letter from Respondent dated September 12, 2013, which said:

> 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 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 July 6 to July 21.

Also in September of 2013, the Employer ended dues deductions for members of Charging Party's bargaining unit. The final dues deduction from Charging Party's wages was taken from her last paycheck in September 2013, and was for the period prior to her resignation from Union. Charging Party has not made any financial contributions to Respondent since the September 2013 deduction. Although Respondent has mentioned the possibility of initiating civil action against members who refuse to pay dues, there has been no such action taken against Charging Party.

Discussion and Conclusions of Law:

Jurisdiction

In her exceptions, Charging Party argues that the ALJ erred by concluding that the Commission does not have jurisdiction to hear this case.

We agree with Charging Party that the ALJ erred by concluding that the Commission does not have jurisdiction over this matter. We recently addressed the issue of our jurisdiction over unfair labor practice charges alleging restraint or coercion in the exercise of public employees' right to refrain from union activity in *Saginaw Ed Ass'n*, 29 MPER 21 (2015). As we explained in that decision, "this Commission generally has no jurisdiction over the internal affairs of labor organizations in the absence of a direct impact on the employment relationship or the denial of rights under § 9 of PERA." See *Michigan State Univ Admin-Prof'l Ass'n*, 25 MPER 30 (2011); *Michigan Ed Ass'n*, 18 MPER 64 (2005); *AFSCME Local 118*, 1991 MERC Lab Op 617, 619 (no exceptions);

MESPA (Alma Pub Sch Unit), 1981 MERC Lab Op 149 (no exceptions). Where a public employee's rights under § 9 of PERA are not implicated in an internal union matter about which a charging party has complained, there must be some effect on that charging party's terms and conditions of employment before the Commission will have jurisdiction over that matter. See, for example, *AFSCME Council 25, Local 1583 (Yunkman)*, 27 MPER 48 (2014) (MERC affirmed the ALJ's dismissal of a charge in which individual charging parties complained that they were expelled from the union upon the union's finding that their involvement in the campaign to replace the union as their bargaining agent violated the union's constitution). See also, *Int'l Union, UAW*, 19 MPER 8 (2006) (MERC affirmed the ALJ's dismissal of a charge in which an individual charging party complained about the union's finding that a candidate in an internal union election was ineligible to be elected to that office).

In this case, the ALJ correctly concluded that Respondent's actions had no impact on the terms or conditions of Charging Party's employment and there is no basis for jurisdiction on those grounds. However, if a labor organization has restrained or coerced a public employee in the exercise of his or her § 9 rights, the labor organization has violated § 10 of PERA.[1] Before the enactment of Act 349, the finding that Respondent's actions had no impact on the terms or conditions of Charging Party's employment would have resolved this issue because, at that time, PERA did not contain an express right to refrain from protected concerted activity. See, *West Branch-Rose City Ed Ass'n*, 17 MPER 25 (2004), n 5.

Prior to the enactment of Act 349, §§ 9 and 10 of PERA[2] provided in relevant part:

> Sec. 9. 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.
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> * * *
>
> Sec. 10. (2) It is the purpose of 1973 PA 25 to reaffirm the continuing public policy of this state that the stability and effectiveness of labor relations in the public sector require, if such requirement is negotiated with the public employer, that all employees in the bargaining unit shall share fairly in the financial support of their exclusive bargaining representative by paying to the exclusive bargaining representative a service fee which may be equivalent

[1] Prior to the enactment of Act 349, a labor organization that restrained or coerced public employees in the exercise of rights guaranteed in § 9 would have violated § 10(3)(a). However, after PERA was amended by Act 349, the applicable provision is § 10(2)(a)

[2] The quotation contains the language of PERA after its amendment by 2012 PA 53, which was effective March 16, 2012.

> to the amount of dues uniformly required of members of the exclusive bargaining representative.
>
> (3) A labor organization or its agents shall not do any of the following:
>
> > (a) Restrain or coerce public employees in the exercise of the rights guaranteed in section 9: This subdivision does not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership.
> >
> > (b) Restrain or coerce a public employer in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances.
> >
> > (c) Cause or attempt to cause a public employer to discriminate against a public employee in violation of subsection (1)(c).
> >
> > (d) Refuse to bargain collectively with a public employer, provided it is the representative of the public employer's employees subject to section 11.
>
> (4) By March 1 of each year, each exclusive bargaining representative that represents public employees in this state shall file with the commission an independent audit of all expenditures attributed to the costs of collective bargaining, contract administration, and grievance adjustment during the prior calendar year. The commission shall make the audits available to the public on the commission's website. For fiscal year 2011-2012, $100,000.00 is appropriated to the commission for the costs of implementing this subsection.

The duty of fair representation stems from the language in § 10(3)(a)[3] which prohibits labor organizations from restraining or coercing public employees in the exercise of the rights guaranteed in § 9. Therefore, when PERA contained language permitting agency shop and the applicable collective bargaining agreement contained a union security clause, the Commission had jurisdiction to examine whether a union's collection of agency fees breached its duty of fair representation, as in *West Branch-Rose City Ed Ass'n*, 17 MPER 25 (2004).

Act 349, which became effective March 28, 2013, amended § 9 of PERA by adding subdivision (b) to subsection 9(1) and by adding subsections (2) and (3).

[3] This sentence refers to section 10(3)(a) of PERA prior to the enactment of Act 349. The language that was in § 10(3)(a) remained in PERA after the adoption of Act 349, but is now at § 10(2)(a).

Subdivision (b) of subsection 9(1) expressly gives public employees the right to refrain from union activity. Act 349 also amended § 10 by eliminating the language previously contained in subsection 10(2) that permitted unions and employers to agree to provisions in their collective bargaining agreements that required all bargaining unit members to share in the financial support of those employees' exclusive bargaining representatives. Act 349 also added subsections (3) through (10) to § 10. Sections 9 and 10 as amended[4] provide in relevant part:

> 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 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).
>
> (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.

[4] The quotation does not contain the language of the amendments to PERA made by 2014 PA 414, which became effective December 30, 2014, since those changes are not relevant to the matter before us.

* * *

Sec. 10(2) A labor organization or its agents shall not do any of the following:

(a) Restrain or coerce public employees in the exercise of the rights guaranteed in section 9. This subdivision does not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership.

(b) Restrain or coerce a public employer in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances.

(c) Cause or attempt to cause a public employer to discriminate against a public employee in violation of subsection (1)(c).

(d) Refuse to bargain collectively with a public employer, provided it is the representative of the public employer's employees subject to section 11.

(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.
>
> (6) The court of appeals has exclusive original jurisdiction over any action challenging the validity of subsection (3), (4), or (5). The court of appeals shall hear the action in an expedited manner.
>
> (7) For fiscal year 2012-2013, $1,000,000.00 is appropriated to the department of licensing and regulatory affairs to be expended to do all of the following regarding the amendatory act that added this subsection:
>
> > (a) Respond to public inquiries regarding the amendatory act.
> >
> > (b) Provide the commission with sufficient staff and other resources to implement the amendatory act.
> >
> > (c) Inform public employers, public employees, and labor organizations concerning their rights and responsibilities under the amendatory act.
> >
> > (d) Any other purposes that the director of the department of licensing and regulatory affairs determines in his or her discretion are necessary to implement the amendatory act.

The amendments to PERA by Act 349 now prohibit unions and employers from requiring employees to financially support unions as a condition of employment. Section 9(1)(b) expressly gives public employees the right to refrain from "join[ing], or assist[ing] in labor organizations." The prohibition against labor organizations "restrain[ing] or coerc[ing] public employees in the exercise of the rights guaranteed in section 9," that had been included in § 10(3)(a) prior to the adoption of Act 349, is now in § 10(2)(a) of PERA. Therefore, we have jurisdiction over matters in which a public employee chooses to refrain from engaging in activities protected under § 9(1)(a) but is unlawfully restrained from doing so by a labor organization. Accordingly, we have jurisdiction to determine whether Respondent's September 12, 2013 response to Charging Party's September 9, 2013 letter notifying the Union of her decision to end her union membership is an unlawful restraint on Charging Party's right to refrain from union activity.

Resignation from the Union

At the time Charging Party resigned from the Union, the collective bargaining agreement between Respondent and the Employer no longer contained a union security clause. Therefore, Charging Party's resignation from the Union had no effect on her employment. Moreover, 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.

Accordingly, Charging Party's September 9, 2013 letter was effective to end her union membership. Additionally, as the ALJ found, there is no credible evidence in the record to suggest that Respondent prevented Beutler from resigning her membership in the Union. Charging Party's membership in the Union ended upon the Union's receipt of her September 9, 2013 letter. Accordingly, there is no basis to find that Respondent restrained Charging Party from exercising her right to refrain from union membership.

In *Saginaw Ed Ass'n*, 29 MPER 21 (2015), we held: "If a public employee has undertaken a financial obligation to support a labor organization and is not subject to a lawful union security agreement, he or she has the right to terminate that financial support obligation." In the *Saginaw* case, we examined this issue in the context of employees whose financial obligation to support their union was the quid pro quo for membership in the union. In this matter, unlike the *Saginaw* case, Charging Party's dues obligation was not necessarily tied to her membership in the Union. Charging Party entered into a dues deduction agreement that obligated her to pay dues to the Union without regard to her union membership.

Dues Checkoff Authorization and Assignment

Charging Party contends that the ALJ erred by concluding that she waived her right to refrain from paying union dues and further erred by concluding that the Union's refusal to permit Charging Party to revoke her agreement to pay union dues on a date outside the window period was not a violation of Charging Party's right to refrain.

As indicated above, the ALJ concluded that Respondent did not violate PERA by refusing to permit Charging Party to revoke her agreement to pay union dues at a time outside the designated window for membership resignation and dues checkoff revocation. His conclusion is based in part on three cases decided by the National Labor Relations Board (NLRB or Board): *Int'l Brotherhood of Electrical Workers, Local 2088 (Lockheed*

Inc), 302 NLRB 322 (1991); *Steelworkers Local 4671 (National Oil Well)*, 302 NLRB 367 (1991); and *Smith's Food & Drug Centers*, 358 NLRB No. 66 (2012).[5] As explained by the ALJ, in each of those cases, the NLRB considered the question of whether an employee's dues checkoff authorization was binding after the employee resigned from the union. In *Lockheed*, the Board concluded that the union violated § 8(b)(1)(A) of the NLRA by continuing to accept dues deducted from the employee's wages after the employee had clearly communicated his intent to resign his union membership. Although the Board ultimately found the employee in that case had no obligation to pay dues after he resigned his union membership, the Board considered whether the obligation to pay dues necessarily ends with resignation from union membership.

In *Lockheed*, the NLRB began its examination of the issue with the discussion of § 302(c)(4) of the NLRA, which sets the parameters for lawful dues deduction authorizations.[6] There, the Board noted:[7]

> From the main portion of Section 302(c)(4) which reads "money deducted from the wages of employees in payment of *membership* (emphasis added),["] one could suppose that, as a matter of existing industrial practice, the deduction of dues from wages was merely a payment mechanism for satisfying a preexisting dues obligation that was itself created by virtue of membership in the union. It would logically follow from this interpretation that an employee's cessation of union membership would eliminate the underlying dues obligation that was being satisfied by the checkoff, effectively nullifying the checkoff as well.

However, the Board went on to explain:[8]

> The problem is that the express language of the proviso of paragraph (4) does not hinge the irrevocability of authorization on an employee's continued status as a union member, but rather keys it exclusively to time-sensitive criteria—a period of up to 1 year or the expiration of the collective bargaining agreement, whichever occurred first. One thus could read the proviso as granting authority to unions and employers to enter into checkoff agreements that provide, once employee consent to checkoff has been given, for limited periods of irrevocability without regard to an employee's maintaining membership status.

After explaining that "the record is not clear whether Congress intended to

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[5] Although not controlling, we often look to federal precedent developed under the National Labor Relations Act (NLRA) for guidance in interpreting PERA. *City of Bay City*, 20 MPER 96 (2007). See also *St Clair Intermediate Sch Dist* v *Intermediate Ed Ass'n*, 458 Mich 540, 559; 581 NW2d 707 (1998); and *Detroit Police Officers Ass'n v Detroit*, 391 Mich 44; 214 NW2d 803 (1974).

[6] It is to be noted that PERA, unlike the NLRA, does not contain any provision that sets guidelines for limiting the revocation of union dues deduction authorizations. PERA contains no language comparable to that contained in § 302(c)(4).

[7] *Lockheed Inc*, 302 NLRB 322, 325 (1991).

[8] *Id.*

regulate the manner in which checkoff authorizations would interact with an employee's status as a union member," the Board concluded that "Congress seems to have simply stayed its hand from deciding whether in all instances check-off authorization must ultimately be a function of union membership."[9] The Board noted that although it had previously held that a checkoff authorization under § 302(c)(4) is a contract between an employee and his or her employer,[10] it must also consider that under contract law, as explained in the Restatement 2d *Contracts* § 317 (1981), a checkoff authorization is an assignment of a right. The Board explained:[11]

> More specifically, a checkoff authorization is a partial assignment of a future right, that is, an employee (the assignor) assigns to his union (the assignee) a designated part of the wages he will have a right to receive from his employer (the obligor) in the future, so long as he continues his employment. The employer is thereby authorized to pay the specified amounts to the union when the employee's right to wage payments accrues. Further, an assignment may be conditional and/or revocable, and when an assignment is made upon a condition, the absence or disappearance of that condition may destroy the assignee's right. Put in the terms of the issue in this case, the contractual questions are (1) whether an employee who has agreed to assign part of his wages to a union pursuant to the terms of an authorization like the one signed by May has agreed to make the assignment only on the condition that he is a union member, and (2) whether, when that condition disappears—either through the action of the employee in resigning or through the action of the union in expelling him—the union-assignee's right to the wage payments is terminated.

Finally, in addressing the question of whether an employee remains liable for payment of union dues after union membership is terminated, the Board found that an employee would only remain responsible for paying union dues after the termination of his or her union membership where there is a clear and unmistakable waiver of the right to refrain from assisting a union. The Board explained:[12]

> [T]here is no reasonable basis for precluding an employee from individually agreeing that he will pay dues to a union whether or not he is a member of it and that he will pay such dues through a partial assignment of his wages, i.e., a checkoff. Neither is there a reasonable basis for precluding enforcement of such a voluntary agreement. But the policies discussed above also make it reasonable for us to conclude that an employee who has promised only to pay union "membership" dues by checkoff for 1 year has not necessarily thereby obliged himself to continue

[9] *Lockheed Inc*, 302 NLRB 322, 326-327 (1991)
[10] Citing *Cameron Ironworks*, 235 NLRB 287, 289 (1978), enforcement denied on other grounds, 591 F2d 1 (CA 5, 1979) and *Machinists Local 2045 (Eagle Signal)*, 268 NLRB 635, 637 (1984).
[11] *Lockheed Inc*, 302 NLRB 322, 327-328 (1991).
[12] *Lockheed Inc*, 302 NLRB 322, 328-329 (1991).

> paying such dues throughout that period—i.e., to continuing assisting the union—even when he is no longer a union member. **We will require clear and unmistakable language waiving the right to refrain from assisting a union, just as we require such evidence of waiver with regard to other statutory rights.**
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> * * *
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> We recognize that paying dues and remaining a union member can be two distinct actions. We merely hold that the policy of "voluntary unionism" that informs the Supreme Court's decision in *Pattern Makers* with regard to remaining, or declining to remain, a union member also logically relates to other forms of union activity. The policy warrants the application of a test that will assure that the extraction of moneys from an employee's wages to assist a union, if not authorized by a lawful union-security clause, is in accord with the employee's voluntary agreement. **If the employee did not agree, when he signed the authorization, to have "regular membership dues" deducted even when he is no longer a union member, then the employee's continued financial support of the union is not clearly "voluntary" after he has resigned.**
>
> Accordingly, we will construe language relating to a checkoff authorization's irrevocability—i.e., language specifying an irrevocable duration for either 1 year from the date of the authorization's execution or on the expiration of the existing collective-bargaining agreement—as pertaining only to the *method* by which dues payments will be made *so long as dues payments are properly owing*. We shall not read it as, by itself, a promise to pay dues beyond the term in which an employee is liable for dues on some other basis. Explicit language within the checkoff authorization clearly setting forth an obligation to pay dues even in the absence of union membership will be required to establish that the employee has bound himself or herself to pay the dues even after resignation of membership. **If an authorization contains such language, dues may properly continue to be deducted from the employee's earnings and turned over to the union during the entire agreed-upon period of irrevocability, even if the employee states he or she has had a change of heart and wants to revoke the authorization.**

(Emphasis (italics) in original. Additional Emphasis (bold) added. Footnotes omitted.)

In *Lockheed*, the Board concluded that the language of the checkoff authorization did not constitute a clear and unmistakable waiver of the right to refrain from assisting the union. Therefore, the NLRB concluded that the union violated § 8(b)(1)(A) of the NLRA by continuing to collect union dues from the charging party's wages after he informed the union of his intent to resign his membership and to revoke his checkoff authorization.

In *Steelworkers Local 4671 (National Oil Well)*, 302 NLRB 367 (1991), which

was issued the same day as the Board's decision in *Lockheed*, the NLRB applied the analysis of *Lockheed* to find that the dues authorization signed by the charging party in that case obligated him to pay dues after his effective resignation from membership in the union. In *Steelworkers*, the charging party signed a dues checkoff authorization which stated, "[P]lease 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 union, monthly dues, assessment . . . ."[13] Based on that language, the Board found that the charging party "clearly authorized the continuation of his dues deduction even in the absence of union membership." *Id*. The Board, therefore, found that the charging party continued to have a dues obligation after he resigned from the union.

More recently, in *Smith's Food & Drug Centers*, 358 NLRB No. 66 (2012),[14] the NLRB affirmed an ALJ's decision which applied the *Lockheed* analysis to find that the union's failure to treat employees' union membership resignations as revocations of those employees' dues checkoff authorizations did not violate the NLRA. The dues checkoff authorization in that case stated:

> 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.

We note that *Lockheed* is partly based on the Board's interpretation of § 302(c)(4) of the NLRA, which sets the parameters for lawful dues deduction authorizations. PERA does not contain any language similar to that contained in § 302(c)(4) of the NLRA, and

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[13] *National Oil Well*, 302 NLRB 367, 368 (1991).

[14] In *NLRB v Noel Canning*, 134 S Ct 2550 (2014), the Supreme Court found that the recess appointments of two Board members were not valid. Those two Board members participated in the Board's decision in the *Smith's Food and Drug Centers* case. Based on the decision in *Noel Canning*, the Court of Appeals vacated the Board's decision in *Smith's Food and Drug Centers* and remanded the matter to the Board for further proceedings. In a decision issued March 20, 2015, the Board considered the matter de novo, agreed with the rationale of the earlier decision in *Smith's Food and Drug Centers* and again affirmed the ALJ's decision for the reasons stated in the 2012 decision. As of December 10, 2015, the Board's March 20, 2015 decision in *Smith's Food and Drug Centers* was pending on appeal before the United States Court of Appeals for the D. C. Circuit.

does not contain specific language addressing guidelines for lawful dues deduction authorizations. However, we agree that a reasonable period of irrevocability for any dues deduction authorization should not exceed one year.

We also find the reasoning of *Lockheed* persuasive. The Board's analysis of the function of a union dues checkoff authorization is consistent with contract law as explained in the Restatement 2d *Contracts* § 317 (1981). A wage assignment is an assignment of the employee's right to receive wages from the employer to someone to whom the employee owes money. Where an employee has agreed to pay union dues and has signed a dues deduction authorization, the employee has made a wage assignment giving the union the right to a portion of her wages equal to the amount of her periodic dues obligation. The duration of the employee's obligation to pay dues to the union is dependent upon the lawful terms of her agreement with that union, as explained further below.

In *National Oil Well*, and in *Smith's Food & Drug Centers*, the respective dues checkoff authorizations performed two functions: (1) each of the authorizations requested the respective employers to deduct the amount of the union dues from the employees' wages and pay that amount to the unions; and (2) each of the authorizations set forth conditions for terminating the employees' underlying obligation to pay dues to the union and the employers' dependent authority to deduct that amount from the employees' wages and pay it to the union. We agree with the Board that there is no reasonable basis for precluding an employee from individually agreeing to pay dues to the union representing the bargaining unit in which the employee works whether or not the employee is a member of that union. If the employee's agreement is truly voluntary, there is no reasonable basis for finding that such an agreement unlawfully restrains the employee's right to refrain from supporting that union. Indeed, if the employee's agreement is truly voluntary, the employee has waived the right to refrain from supporting the union for the term of the agreement. Like the NLRB, we find that, to be effective, the waiver of the right to refrain from supporting a union must be clear and unmistakable.

We note that the language of the checkoff authorization in *Smith's Food and Drug Centers* is similar to the language of the Checkoff Authorization and Assignment signed by Charging Party in this matter. The dues checkoff authorization that Charging Party signed, like the language of the checkoff authorization in *Smith's Food and Drug Centers*, is a clear and unmistakable waiver of the right to refrain from supporting the Union until such time as the dues checkoff authorization is effectively revoked. When Charging Party signed the application for membership in Teamsters Local 214 and the Checkoff Authorization and Assignment, the document she signed gave her a choice between becoming a union member and being a nonmember agency fee payer. That document clearly explained the difference between union membership and nonmember status and explained that either choice would satisfy the contractual requirements necessary to retain her employment under the agency shop provision of the collective bargaining agreement. Knowing that union membership was not required, Charging Party chose to be a union member. Charging Party also elected to authorize her employer

to deduct her monthly union dues from her wages for payment to the Union. In signing the Checkoff Authorization and Assignment, Charging Party acknowledged the voluntary nature of the authorization and that her payment of union dues was not conditioned on her present or future Union membership. It is, therefore, apparent that she knowingly and voluntarily signed an agreement that obligated her to pay dues to the Union even after she ceased being a Union member. In so doing, she waived her right to refrain from financially supporting the Union until such time as she terminated that obligation in accordance with her agreement with the Union.

Revocation of the Checkoff Authorization and Assignment

As indicated above, Charging Party's September 9, 2013 letter to Respondent's president stated "per our right to work in Michigan I am opting to leave the teamsters local 214. I would like this to be with no delay. If anything but this letter is needed please inform me at my address." In accordance with our decision in *Saginaw Ed Ass'n*, 29 MPER 21 (2015), Charging Party's letter was clearly sufficient to terminate her membership in the Union at the point it was received by Respondent. While it is evident that Charging Party also desired to terminate her obligation to pay dues to the Union, ending the dues obligation was not mentioned in Charging Party's letter. Nevertheless, Respondent replied by a letter to Charging Party, dated September 12, 2013, which stated:

> 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 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 July 6 to July 21.

Respondent's witness testified at hearing that the September 12, 2013 letter was a form letter selected and sent by a member of the Union's clerical staff and that, in the opinion of the witness, the wrong form letter had been sent to Charging Party since Charging Party's letter did not expressly refer to revoking her dues checkoff authorization. Although Respondent subsequently sent other correspondence to Charging Party about the dues structure and changing the method for payment of dues after the change in the legality of dues deductions by public school employers, Respondent offered no evidence that a letter had been sent to Charging Party to correct the presumed error in the September 12, 2013 letter.

At a minimum, Respondent's September 12, 2013 letter served to acknowledge receipt of Charging Party's notice of her resignation from the Union. Inasmuch as Respondent failed to inform Charging Party that its September 12, 2013 letter was in error, Charging Party could reasonably assume that Respondent recognized that she intended her September 9, 2013 letter to be treated as a revocation of her Checkoff Authorization and Assignment, as well as notice of her resignation from the Union.

Charging Party further contends that the ALJ erred by failing to consider Charging Party's argument that 2012 PA 53 invalidated Charging Party's Checkoff Authorization and Assignment. We disagree. Act 53 changed the obligations of public school employers with respect to the deduction of dues and agency fees from employee paychecks. Public school employers may no longer agree to withhold money from the paychecks of their employees for the purpose of providing such funds to unions in payment of the employees' dues or agency fee obligations. However, Act 53 did not alter the obligation of employees to pay dues pursuant to a lawful agreement. If a public school employee has a lawful obligation to pay union dues, that obligation was not changed by Act 53.

As indicated above, PERA contains no language comparable to that contained in § 302(c)(4) of the NLRA, nor does it contain specific language addressing guidelines for lawful dues deduction authorizations. It does however contain an express right to refrain from assisting labor organizations. Charging Party's resignation from Union membership, though outside the window period, is sufficient to end her membership. Moreover, given Charging Party's intention, and Respondent's apparent recognition of her intention, to revoke the Checkoff Authorization and Assignment, Charging Party's September 9, 2013 letter is sufficient to notify Respondent of her revocation of the Checkoff Authorization and Assignment. Although her notice was not given within the window period, we find it unreasonable and unnecessary to require Charging Party to provide the Union with additional notice of her revocation of the Checkoff Authorization and Assignment. Therefore, Respondent must treat Charging Party's notice of her revocation of the Checkoff Authorization and Assignment as effective no later than July 6, 2014, which is the beginning date of the next window period following the date of the notice.

Conclusion

In summary, we disagree with the ALJ's finding that we lack jurisdiction over this matter. Since the charge asserts that Respondent restrained Charging Party in the exercise of her rights under § 9 of PERA, the charge alleges a violation of § 10(2). We, therefore, have jurisdiction over this matter. Charging Party's September 9, 2013 letter was sufficient to end her Union membership. Respondent has taken no action rejecting Charging Party's resignation from the Union or preventing her resignation from being effective. Therefore, Charging Party was not restrained in the exercise of her right to refrain from union membership. Moreover, under the circumstances of this case, the September 9, 2013 letter was sufficient to notify the Union that Charging Party was revoking the Checkoff Authorization and Assignment. Respondent has taken no action to unlawfully coerce Charging Party to financially support the Union. Any obligation Charging Party may have had to financially support the Union is limited to the time period prior to her resignation from the Union and such time period for which she agreed to pay union dues between the end of her Union membership and the beginning of the next window period following the termination of her Union membership. Moreover, there has been no effect on Charging Party's employment as a result of this matter. Accordingly, we find that Respondent has not violated § 10(2) of PERA.

ORDER

The ALJ's decision is affirmed as modified herein. The charge is dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

/s/
Edward D. Callaghan, Commission Chair

/s/
Robert S. LaBrant, Commission Member

/s/
Natalie P. Yaw, Commission Member

Dated: December 11, 2015

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

Case No. CU13 I-037

TEAMSTERS LOCAL 214, Docket No. 13-011918-MERC
Respondent-Labor Organization,

-and-

PAULINE BEUTLER,
An Individual Charging Party.
_____/

APPEARANCES:

National Right to Work Legal Defense Foundation, by Aaron B. Solem, Staff Attorney, appearing *pro hac vice*, and John N. Raudabaugh, Staff Attorney, for Charging Party

Law Office of Wayne A. Rudell, by Wayne A. Rudell, for Respondent

DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE

This case arises from an unfair labor practice charge filed on October 9, 2013, by Pauline Beutler against Teamsters Local 214. Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216, the case was assigned to David M. Peltz, Administrative Law Judge (ALJ) for the Michigan Administrative Hearing System (MAHS), acting on behalf of the Michigan Employment Relations Commission (MERC). Based upon the entire record, including the transcript of the May 5, 2014, evidentiary hearing, exhibits and post-hearing briefs filed by the parties on or before July 14, 2014, I make the following findings of fact, conclusions of law and recommended order.

The Unfair Labor Practice Charge and Procedural History:

The charge, as amended on April 11, 2014, alleges that Teamsters Local 214 ("Respondent" or "the Union") violated Sections 9(1)(b) and 10(2) of PERA by refusing to honor Beutler's resignation from membership in the Union and by denying her request to end dues payments. As a remedy, Charging Party requests that the Commission declare Respondent's restrictions on checkoff revocation unlawful, order the Union to recognize Beutler's resignation and require Respondent to repudiate its demand that she continue to pay dues to the labor organization.

A telephone prehearing conference was held on January 28, 2014, at the conclusion of which I directed the parties to each file position statements setting forth their respective factual allegations and legal arguments. Charging Party filed its position statement on March 5, 2014. The Union filed its position statement, along with a motion for summary disposition, on March 24, 2014. On April 11, 2014, Charging Party filed a brief in reply to the Union's position statement and motion. A second telephone prehearing conference was held on April 29, 2014, during which I indicated to the parties that I would be denying the motion for summary disposition. An evidentiary hearing on the charge was held in Detroit on May 5, 2014.

Findings of Fact:

I. Background

Pauline Beutler is employed by a public school employer, the Livingston Educational Service Agency ("LESA" or "the employer") as a bus driver and is a member of a bargaining unit represented by Respondent. When Beutler was hired by the LESA on July 1, 2010, there was no collective bargaining agreement in place for the bus drivers' bargaining unit. The Union and the LESA entered into a new contract covering the bus drivers effective September 14, 2011. That agreement contained a union security clause, Article V, which provided, in part:

> Membership in the Union is not compulsory. Regular employees have the right to join, not join, maintain, or drop their membership in the Union, as they see fit. Neither party shall exert any pressure on or discriminate against any employee with regards to such matters.
>
> All employees in the bargaining unit recognized by this contract shall, as a condition of continued employment, pay the Union, the employee's exclusive collective bargaining representative, an amount of money equal to that paid by other employees in the bargaining unit who are members of the Union and limited to a legally permissible amount of money not to exceed the union's regular and usual dues. Such payment shall commence for probationary employees with the first pay [sic] thirty (30) days after the date of employment. If, during the term of this Agreement, it shall be determined by a court of competent jurisdiction that the foregoing amount is unlawful, the amount shall be modified to such amount as is lawful.
>
> During the period of time covered by this Agreement, the Employer agrees to deduct from the pay of any employee all dues and/or initiation fees of the Union and pay such amount to the Union; provided, however, that the Union presents to the Employer authorization signed by such employee allowing such deductions and payment to the Union.

On September 9, 2011, Beutler signed an application for membership in Teamsters Local 214 and a dues checkoff authorization. The one page document provides, in pertinent part:

APPLICATION AND NOTICE For Membership in Local Union No. 214 Affiliated with the International Brotherhood of Teamsters

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 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 request 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 the 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.

I have read and understand the options available to me and submit this application to be admitted as a member of the Local Union.

CHECKOFF AUTHORIZATION AND ASSIGNMENT

I, Pauline M. Beutler 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 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. [Emphasis in original.]

There is no evidence in the record suggesting that Beutler was in any way coerced into signing the application and checkoff authorization.

II. 2012 PA 53 and 2012 PA 349

On March 16, 2012, the Legislature passed 2012 PA 53, which amended Section 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." Although the Act was given immediate effect, it contains a grandfather clause delaying enforcement of the prohibition set forth therein where there is an existing collective bargaining agreement in place. Under such circumstances, a public school employer may continue to collect dues or service fees until the collective bargaining agreement "expires or is terminated, extended or renewed."[15]

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

> It shall be lawful for public employees to organize together or to form, join or assist in labor organizations, to engage in lawful concerted activities for the purpose of collective negotiation or bargaining or other mutual aid and protection, or to negotiate or bargain collectively with their public employers through representatives of their own free choice.

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

> (1) Public employees may do any of the following:

[15] In an order issued on June 11, 2012, U.S. District Court Judge Denise Page Hood, Jr., enjoined enforcement of PA 53 on the ground that the statute violated equal protection and first amendment principles. *Bailey v Callaghan*, 873 F Supp 2d 879 (ED Mich 2012). On May 9, 2013, the Court of Appeals reversed Judge Hood's decision and remanded the case to the District Court to dissolve the injunction. 715 F3d 956 (CA 6 2013).

> (a) Organize together or form, join, or assist in labor organizations; engage in lawful concerted activities for the purpose of collective negotiation or bargaining or other mutual aid and protection; or negotiate or bargain collectively with their public employers through representatives of their own free choice.
>
> (b) Refrain from any or all of the activities identified in subdivision (a).

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

> (2) No person shall by force, intimidation, or unlawful threats compel or attempt to compel any public employee to do any of the following.
>
> > (a) Become or remain a member of a labor organization or bargaining representative or otherwise affiliate with or financially support a labor organization or bargaining representative.
> >
> > (b) Refrain from engaging in employment or refrain from joining a labor organization or bargaining representative or otherwise affiliating with or financially supporting a labor organization or bargaining representative.
> >
> > (c) Pay to any charitable organization or third party an amount that is in lieu of, equivalent to, any portion of dues, fees, assessments, or other charges or expenses required of members of public employees represented by a labor organization or bargaining representative.
>
> (3) A person who violates subsection (2) is liable for a civil fine of not more than $500.00. A civil fine recovered under this section shall be submitted to the state treasurer for deposit in the general fund of this state.

Section 10 of PERA sets forth the specific conduct which constitutes an unfair labor practice by a public employer or a labor organization. Both before and after the 2012 amendments to PERA, Section 10(2)(a) prohibited a labor organization from restraining or coercing public employees in the exercise of their Section 9 rights. 2012 PA 349 added the following new language to subsections 10(3) and 10(5) of PERA:

> (3) [A]n individual shall not be required as a condition of obtaining or continuing public employment to do any of the following:

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

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

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

(d) Pay to any charitable organization or third party any amount that is in lieu of, equivalent to, or any portion of dues, fees, assessments, or other charges or expenses required of members of or public employees represented by a labor organization or bargaining representative.

* * *

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

The 2012 amendments to PERA retained language in Section 10 affirming that the Act does not "impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership." However, the "right-to-work" package of legislation removed language from Section 10 which made it lawful for a public employer and labor organization to require, as a condition of employment, that all bargaining unit members share fairly in the financial support of their exclusive bargaining representative by paying to the labor organization an agency or "service" fee.

III. Beutler's Resignation and Aftermath

The collective bargaining agreement covering Charging Party's unit expired on June 30, 2013. On or about May 2, 2013, the LESA and the employer entered into a new collective bargaining agreement covering the period July 1, 2013 through June 30, 2016. Presumably in accordance with 2012 PA 53 and 2012 PA 349, the new agreement does not contain any provision requiring compulsory payments to the Union, nor does the contract authorize the LESA to deduct dues from the paychecks of its employees.

On or about September 9, 2013, Beutler sent a letter to Respondent's president, Joseph Valenti, stating that "per our right to work in Michigan I am opting to leave the teamsters local 214. I would like this to be with no delay. If anything but this letter is

needed please inform me at my address." Beutler sent the letter to Valenti via certified mail pursuant to instructions she had received from Regina Kubick, a Union steward. There is no dispute that Charging Party's letter was sent to Teamsters Local 214 outside of any applicable window period for the revocation of dues checkoff authorizations. Charging Party did not separately notify the school district of her resignation until April 30, 2014.

On or about September 12, 2013, Beutler received a letter from Respondent signed by Valenti and copied to Mark Gaffney, a business agent for Teamsters Local 214. The document appears to be a stock form letter with Charging Party's name and other information filled in where appropriate. The letter states:

> 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 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 July 6 to July 21.

At the hearing in this matter, Gaffney testified that letters from bargaining unit members like the one sent to the Union by Beutler on September 9, 2013, are typically received by Local 214's clerical staff, who are then responsible for selecting and completing one of several form letters to send out as the Union's formal response. Gaffney testified that, in his opinion, the wrong form letter was sent to Charging Party because it was nonresponsive to her request to resign from the Union. According to Gaffney, the form letter sent to Beutler on September 12, 2013, was intended for situations in which a member wanted to stop paying dues and Beutler never made such a request.

Charging Party did not receive any additional correspondence from Respondent directly relating to her September 9, 2013, letter seeking to resign from the Union. However, Beutler testified that her letter was the subject of discussion at a Union meeting which she attended on October 2, 2013. According to Beutler, Gaffney spoke at the meeting and told the bargaining unit members in attendance that they must continue to pay dues to Respondent unless and until they revoke their financial obligation during the window period set forth in the checkoff authorization. When Gaffney was asked what would happen if a member refused to pay dues, he referenced the possibility of the Union instituting a civil action in small claims court, but stated that Respondent had not yet decided how it would handle such a situation. At hearing, Gaffney agreed generally with Charging Party's characterization of the events on October 2, 2013, but denied that Beutler's September 9, 2013, letter was specifically referenced at the meeting.

On or about October 31, 2013, Charging Party received a letter from the Union at her home address. The letter began with the salutation "Dear Teamster Member" and

was signed by Valenti. The letter announced that Teamsters Local 214 had met with its International Union and received permission to reconfigure the dues structure for bargaining unit members for the remainder of the 2013 to 2014 school year. Members were instructed to pay their dues to Respondent's Detroit office by check or money order until the Union could "develop a better method of our members paying their dues." The letter cautioned that if "the number of employees paying dues is reduced below a level that would make representation of the bargaining unit impossible to maintain, we would be forced to withdraw representation, thus reducing your employment status to serve as **"at will"** employees and **cancelling the contract which guarantees your contractual wages and benefits.**" (Emphasis in original.) A similar warning was included in a letter sent to Beutler by Respondent on or about January 16, 2014. In the second letter, the Union noted that if a "significant number" of unit members were to discontinue payment of dues, Respondent would have to evaluate whether it could "continue to be liable for representation of that bargaining unit."

At hearing, Gaffney testified that mass mailings to members are prepared using the "Titan" computer system, which contains a list of all individuals working in bargaining units represented by Teamsters Local 214. According to Gaffney, the Titan database is updated on an infrequent basis. Thus, the database does not immediately reflect the fact that a particular member may have sent a letter seeking resignation from the Union. Gaffney testified credibly that the letter which Beutler received dated October 31, 2013, was sent to all public school employees working in units represented by Respondent. Describing the letter as a "marketing attempt", Gaffney indicated that it was intended "not only to encourage people to pay dues, but also to encourage people not to drop out and, yes, to encourage people to come back." Gaffney testified that the letter which Beutler received on or about January 16, 2014, was also sent to all public school employees working in bargaining units represented by Teamsters Local 214.

Pursuant to 2012 PA 53, the Employer ended dues deductions for members of Charging Party's bargaining unit in September of 2013 and Beutler has not made any financial contributions to the Union since that time.[16] Gaffney testified credibly and without contradiction that the Union has still not decided how or whether to proceed if a member fails to pay dues without first making a request to end the dues obligation during the window period set forth in the checkoff authorization. Although the Union considers Beutler to be in arrears, there is no evidence indicating that Respondent has initiated a collections action or any other civil litigation against her, nor has there been any allegation by Charging Party that the Union has attempted to impose discipline on her. When asked at hearing whether the Union still considered Beutler a member, Gaffney testified, "It's difficult to say, but if I had to say I guess we'd consider her a nonmember." Charging Party stipulated that there has been no impact on her employment status as a result of the events giving rise to the charge. At the time of the hearing in this matter, Charging Party remained employed by the LESA as a bus driver.

[16] Charging Party testified that she has no objection to the final deduction of dues from her paycheck on September 20, 2012, because that paycheck was for the period prior to her resignation.

Discussion and Conclusions of Law:

The gravamen of this dispute is Charging Party's contention that Respondent has violated the recently enacted "right-to-work" legislation, 2012 PA 349, by refusing to affirmatively accept Beutler's resignation from the Union and asserting that she has a continuing financial obligation to pay Union dues pursuant to the window period set forth in the checkoff authorization which she signed in September of 2011. Charging Party contends that by amending Section 9 of PERA to include the "right to refrain" from assisting a labor organization, the Legislature granted to public employees the right to resign from a labor organization without limitation and the unfettered authority to immediately refuse to pay any dues or fees to the union. According to Charging Party, the checkoff authorization card signed by Beutler does not supersede the protections afforded by Section 9 of PERA because the right to refrain from assisting a labor organization cannot be waived. In support of this assertion, Charging Party relies largely upon federal precedent interpreting purportedly similar language in the National Labor Relations Act ("NLRA"), 29 USC 150 *et seq*. In particular, Beutler contends that the U.S. Supreme Court's decision in *Pattern Makers' League of North America v National Labor Relations Board*, 473 US 95 (1984), stands for the proposition that the "right to refrain" language in Section 7 of the NLRA gives employees a statutory right to resign union membership at any time which cannot be voluntarily relinquished.

Administrative Law Judge Julia Stern recently addressed these same or substantially similar arguments in *Saginaw Ed Assn and MEA*, Case Nos. CU13 I-054 – CU13 I-061; Docket Nos. 13-013125-MERC – 13-013134-MERC and in two companion cases issued that same day, September 2, 2014. See *Grand Blanc Clerical Ass'n*, Case Nos. CU14 C-020 & CU14 C-009; Docket Nos. 14-006843-MERC & 14-004413-MERC and *Standish-Sterling Educational Support Personnel Ass'n*, Case No. CU14 B-002; Docket No. 14-002293-MERC. In these cases, Judge Stern concluded that when the Legislature amended Section 9 of PERA to include the "right to refrain" from assisting labor organizations, it intended to give public employees the same rights accorded to private sector employees under Section 7 of the NLRA, which provides that "[e]mployees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities. . . ." In *Saginaw Ed Ass'n*, Judge Stern held that the Union unlawfully restricted the charging parties' right to refrain from concerted activity by maintaining and enforcing a policy prohibiting resignations outside of the month of August. Judge Stern's finding was primarily based upon the Supreme Court's decision in *Pattern Makers'* and on the decision of the National Labor Relations Board ("NLRB" or "the Board") in *International Brotherhood of Electrical Workers, Local 2088 (Lockheed Inc)*, 302 NLRB 322 (1991).

Pattern Makers' involved a provision in the union's constitution, League Law 13, which stated that resignations would not be accepted from union members when a strike or threat of a strike was imminent. Less than a year after that provision was ratified, the

union called an economic strike. During the first seven months of the strike, eleven employees tendered their resignation from the union, crossed the picket line and returned to work. When the strike finally ended, the union expelled one of the employees and attempted to cause his discharge under the union security agreement. The union notified the remaining ten employees that their resignations had been rejected as violative of League Law 13 and that they would each be fined approximately the equivalent of one day's pay for each day they worked during the 19-month strike. The employers filed a charge with the NLRB arguing that the union had committed an unfair labor practice by penalizing employees for returning to work after tendering their resignations. The Board agreed, concluding that the fines were imposed in violation of Section 8(b)(1)(A) of the Act, which prohibits a labor organization from restraining or coercing employees in the exercise of their Section 7 rights. The U.S. Supreme Court granted certiorari and, in a 5-4 decision, upheld the Board's ruling.[17]

The Court began its analysis of the Board's decision with an examination of the legislative history of Sections 7 and 8(a)(3) of the NLRA, the latter of which makes it an unfair labor practice for an employer to discriminate against employees "in regard to hire or tenure of employment or any term or condition of employment" for the purpose of encouraging or discouraging membership in a labor organization. Because the enactment of Section 8(a)(3) eliminated compulsory union membership as a condition of employment, the Court held that League Law 13 was contrary to the congressional policy of voluntary unionism. In so holding, the Court rejected the union's reliance on Section 8(b)(1)(A) of the NRLA which gives a labor organization the authority to "prescribe its own rules with respect to the acquisition or retention of membership." The Court held that Congress did not intend for such language to authorize restrictions on the right to resign and escape union discipline. According to the Court, the internal discipline proviso only covers legitimate internal union matters such as expulsion and admission of members and related enforcement mechanisms such as fines. The Court also rejected the union's contention that League Law 13 did not interfere with workers' employment rights because offending members were only fined and not discharged. The Court found such an argument unpersuasive, noting that a union has not left a "worker's employment rights inviolate when it exacts [his entire] paycheck in satisfaction of a fine imposed for working." *Id*. at 107, quoting Wellington, *Union Fines and Workers' Rights*, 85 Yale L.J. 1022, 1023 (1976).

As noted by Judge Stern in *Saginaw* and its companion cases, the Supreme Court's decision in *Pattern Makers'* was confined to the issue of whether a union can lawfully restrict a member from resigning his or her membership in order to avoid union discipline. Stern characterizes the Board's decision in *Lockheed*, 302 NLRB 322, as addressing whether a union can place similar restrictions on when a member can resign

[17] In determining that a union may not restrict its members' right to resign under the NLRA, the Court repeatedly emphasized that it was limiting the scope of its review to the reasonableness of the Board's interpretation of the Act. *Pattern Makers'* at 100-112, 114. In fact, Justice White, who cast the pivotal fifth vote for the decision, based his opinion entirely on deference to the Board and confessed that had the NLRB ruled in favor of the union, he would have similarly yielded to the Board's decision. *Id.* at 117 (White, J., concurring).

for the purpose of escaping a financial obligation. More precisely, the question presented in *Lockheed* is whether a union, without reliance on any valid union security clause, may seek to require an employee to continue financially supporting the union following his or her resignation. In *Lockheed*, an employee signed a dues checkoff authorization form instructing the employer to deduct from his paycheck a union initiation fee and, on the first day of every month, membership dues. The checkoff authorization, by its terms, was irrevocable for a period of one year from the date it was signed or until the collective bargaining agreement expired, whichever was the shorter of the two periods. Before either event occurred, the employee sent letters to the union and the employer resigning his membership and revoking his checkoff authorization. When the employer continued to deduct dues on the union's behalf following receipt of the revocation, the employee filed an unfair labor practice charge with the Board alleging that by accepting the dues, the union was in violation of Sections 8(b)(1)(A) and (2) of the NLRA. The union filed an answer to the charge admitting that there was no requirement in the contract requiring employees to be members of the union and that its sole basis for asserting that the employee had a continuing obligation to pay dues was the checkoff authorization form.

In determining whether the Union could seek to require the continued involuntary checkoff of dues, the Board in *Lockheed* specifically recognized that remaining a member and paying dues are two distinct actions and that an employee can voluntarily agree to pay dues even when he or she is no longer a member of the Union. The NLRB held that in keeping with the policy of voluntary unionism recognized by the Supreme Court in *Pattern Makers'*, a dues checkoff authorization will be found to have survived an employee's resignation only where the authorization clearly acknowledges the employee's obligation to continue financially supporting the union regardless of membership status. In so holding, the Board noted that it would require clear and unmistakable language waiving the Section 7 right to refrain from assisting a union, the same proof that is required for finding a waiver of other statutory rights. With respect to the specific dues checkoff authorization signed by the employee in *Lockheed*, the Board held that the language was not sufficiently clear to warrant the conclusion that the employee had waived either his right to resign or his right to revoke the checkoff authorization. For that reason, the Board held that the checkoff authorization did not survive after the employee resigned and, therefore, that the union had violated Sections 8(b)(1)(A) and (2) of the Act.

In *Steelworkers Local 4671 (National Oil Well)*, 302 NLRB 367 (1991), a decision issued the same day as *Lockheed*, the Board concluded that a union had not engaged in an unfair labor practice by seeking to enforce the financial obligations of an employee who had resigned his membership in the labor organization. In *National Oil Well*, the collective bargaining agreement provided that employees who choose to become members could authorize the employer to make monthly dues deductions from their paychecks. A union member, Eugene Dugger, signed an agreement instructing the employer to "please 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 . . ." One year after signing the agreement, Dugger notified the union in writing of his request to terminate his membership. The letter was

not sent within the permissible revocation period set forth in the dues checkoff authorization, nor did it mention revocation of that authorization. Dugger filed an unfair labor practice charge after discovering that the employer was continuing to deduct dues from his paycheck. Applying the reasoning set forth in *Lockheed*, the Board concluded that the union did not violate the Act by attempting to cause the employer to withhold dues from Dugger's wages after his resignation. The Board held that by signing a checkoff authorization which clearly indicated an agreement to pay dues irrespective of membership in the union, Dugger had voluntarily agreed to the continuation of his dues deduction even in the absence of union membership. See also *Smith's Food & Drug Centers*, 358 NLRB 66 (2012) (language of checkoff authorization was sufficient to show the employee's intent to remain financially obligated to the union even in the absence of membership).

As noted, Judge Stern held in the *Saginaw* decision that when the Legislature amended PERA in 2012 PA 349, it intended Section 9(1)(b) to have the same meaning as the "right to refrain" language found in Section 7 of the NLRA. Based primarily upon *Pattern Makers'* and *Lockheed*, as well as the Board's decision in *California Saw and Knife Works*, 320 NLRB 224 (1995) (a window period for filing *Beck* objections, as applied to employees who resign union membership outside of the window period, operates as an arbitrary restriction on the right to resign), Judge Stern concluded that the "right to refrain" in Section 9 of PERA similarly includes the right to resign union membership at any time and the right to refrain from financially assisting a union after resigning. According to Judge Stern, a union unlawfully restrains or coerces employees in the exercise of their Section 9 rights if its actions restrict the right to refrain, regardless of whether there is any direct impact on the individual's employment.[18] In so holding, Judge Stern found that the right to refrain from financially assisting a union can be waived, provided that the waiver is clear, explicit and unmistakable and is contained in an individual agreement between the member and the union. Applying her analysis of federal law to the facts in *Saginaw*, Judge Stern held that the Michigan Education Association ("MEA") had violated Section 10(2)(a) of PERA by maintaining and enforcing a policy preventing employees from resigning their membership in the union outside of a 31-day window period in August of each year, despite the fact that there was no demonstrable impact on the charging parties' employment.

I generally agree with Judge Stern's characterization of federal precedent interpreting Section 7 and, in particular, her finding that the right to refrain from providing financial assistance to a labor organization under the NLRA can be waived provided that such a waiver is clear, explicit and unmistakable. I find, however, that the reliance placed on federal precedent by Judge Stern in *Saginaw*, as well as Beutler's citation to *Pattern Makers'* in her post-hearing brief, is misplaced. The flaw in the theory

[18] In this regard, Judge Stern overstates the scope of the Court's holding in *Pattern Makers'*. In that case, the charging parties' terms and conditions of employment were not unaffected by the actions of the union. To the contrary, the Court specifically held that the union's imposition of severe and crushing fines which amounted to all of the wages earned by the charging parties over an extended period of time constituted an adverse impact on their employment rights. *Pattern Makers'*, 473 US at 107.

relied upon by Judge Stern is that the analysis focuses almost entirely on the addition of the "right to refrain" language in Section 9(1)(b) of PERA and essentially ignores the other amendments to Sections 9 and 10 of the Act which were enacted as part of the right-to-work package of legislation. In particular, any proper discussion of this issue must include full consideration of Sections 9(2) and (3) of PERA, provisions which are relegated to a mere footnote by Judge Stern in her almost 30-page decision in *Saginaw*, and Section 10(3) of the Act, which states that individuals may not be required as a condition of employment to, among other things, remain members of a labor organization. A thorough examination of the 2012 amendments in their entirety leads to the unavoidable conclusion that the conduct of the sort complained of by Beutler, and by the charging parties in the cases heard by Judge Stern, while perhaps remediable in another forum with adequate factual support, does not constitute an unfair labor practice over which the Commission has jurisdiction.

Had the Legislature actually intended to bring PERA into accord with federal precedent with respect to an employee's right to refrain from concerted activity, it could have done so by simply adding the "right to refrain" proviso to the existing language in Section 9.[19] This would have resulted in an "employee rights" section which would have been substantively the same as Section 7 of the NLRA, agency shop authorization notwithstanding. Instead, the Legislature, in enacting 2012 PA 349, took a different approach by adding two entirely new subsections to Section 9. As noted, Section 9(1) of the Act was amended to recognize the right of public employees to refrain from certain concerted activities. The new subsection which follows, Section 9(2), does not itself enumerate any specific rights or privileges held by public employees; rather, Section 9(2) defines the scope of the rights identified in Section 9(1) by setting forth the specific conduct which would constitute interference with those rights. Under Section 9(2), a person may not, by force, intimidation or unlawful threats, compel or attempt to compel a public employee to:

> (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.

[19] Unfortunately, there were no senate analysis reports or other materials generated during the course of the creation of 2012 PA 349. Such legislative history might have offered considerable guidance to MERC and the courts in interpreting the statutory language added to PERA pursuant to the passage of the right-to-work legislation.

The above catalogue of prohibited behavior was not included in Section 10 of PERA, the section of the Act which identifies the specific conduct by a public employer or labor organization which constitutes an unfair labor practice remediable under Section 16, MCL 423.216. Pursuant to Section 16, only violations of Section 10 are unfair labor practices remediable by the Commission. This limitation on MERC's jurisdiction was discussed by the Commission in *Ann Arbor Public Schools*, 16 MPER 8 (2003). In that case, the public school employer filed a charge alleging that the union had induced or participated in an illegal strike. The ALJ dismissed that allegation, finding that a strike by public employees, while unlawful under Section 2a of PERA, MCL 423.202a, did not constitute an unfair labor practice because such conduct was not prohibited by Section 10. In affirming the ALJ's decision, the Commission rejected the employer's argument that the ALJ should have found that the charge stated a valid claim under PERA:

> Charging Party states in its brief in support of its exceptions: "The Administrative Law Judge's position seems to be that the Charging Party stated no claim simply because PERA has no provision or remedy directly on point. Frankly, this is a cop-out (sic)." On the contrary, the ALJ's refusal to create a violation of PERA, where none has been authorized by the Legislature, is in keeping with the limits on the ALJ and that of the Commission. Inasmuch as the Legislature did not include illegal strikes as unfair labor practices prohibited by Section 10 of PERA, we cannot presume that it intended to do so. We cannot speculate regarding the probable intent of the Legislature beyond the words expressed in the statute.

See also *Michigan State University*, 17 MPER 75 (2004) (the Commission's authority to rule on unfair labor practices is limited to violations of Section 10, and the Commission has no jurisdiction over the constitutional issues raised by the charging party); *IAFF, Local 344, DFFA*, 1988 MERC Lab Op 378 (pursuant to Section 16(a) of the Act, only violations of Section 10 are unfair labor practices remediable by the Commission).

I find that the placement of the list of prohibited conduct in Section 9(2) of PERA, rather than Section 10, constitutes clear evidence of a legislative intent to have violations of the new "right to refrain" provision redressed in a forum other than an unfair labor practice proceeding. This conclusion is further buttressed by the fact that the Legislature, in enacting 2012 PA 349, added an enforcement mechanism to Section 9 for violations of the rights contained therein which is separate and apart from Section 16, which sets forth the procedures and remedies for unfair labor practices identified in Section 10 of the Act. Section 9(3) of PERA provides that any person who violates Section 9(2) is liable for a "civil fine" not to exceed $500.[20] The Commission has no statutory authority to assess

[20] In enacting 2012 PA 349, the Legislature also added a separate enforcement provision to Section 10 of PERA. Section 10(10) provides that any person who "suffers an injury as a result of a violation or threatened violation of subsection (3) may bring a civil action for damages, injunctive relief or both" and authorizes the court to award court costs and reasonable attorney fees to a plaintiff who prevails in an action brought under this subsection. However, Section

such civil fines in this or any other circumstance. See *Redford Union Sch Dist*, 23 MPER 32 (2010), in which the Commission dismissed an allegation by the employer that the union had violated Section 17 of PERA, MCL 423.217, by refusing to present an agreement reached in mediation for ratification by the bargaining unit. The Commission held that it had no jurisdiction over the allegation because Section 17 contains its own enforcement mechanism which authorizes a school district or any other person adversely affected by the violation of that section to bring an action in civil court to enjoin the unlawful behavior.

Section 10 of PERA, the "prohibited conduct" section of the Act, was subject to its own set of modifications and changes as part of the right-to-work package of legislation. The Legislature, in enacting 2012 PA 349, abolished agency shops for public sector employees in Michigan by removing language from Section 10 which made it lawful for a public employer and labor organization to require, as a condition of employment, that all bargaining unit members share fairly in the financial support of their exclusive bargaining representative by paying to the labor organization an agency or "service" fee. In addition, 2012 PA 349 added new language to Subsection 10(3) of the Act, which now provides:

> (3) [A]n individual shall not be required **as a condition of obtaining or continuing public employment** to do any of the following:
>
> (a) Refrain or resign from membership in, voluntary affiliation with, or voluntary financial support of a labor organization or bargaining representative.
>
> (b) Become or remain a member of a labor organization or bargaining representative.
>
> (c) Pay any dues, fees, assessments or other charges or expenses of any kind or amount, or provide anything of value to a labor organization or bargaining representative.
>
> (d) Pay to any charitable organization or third party any amount that is in lieu of, equivalent to, or any portion of dues, fees, assessments, or other charges or expenses required of members of or public employees represented by a labor organization or bargaining representative. [Emphasis supplied.]

10(10) explicitly states that the "[r]emedies provided in this subsection are independent of and in addition to other penalties and remedies prescribed by the act." Thus, the Legislature explicitly recognized that an individual could file an unfair labor practice charge and initiate a civil action for a claimed violation of Section 10(3). In contrast, Section 9(3) of PERA only authorizes an individual to seek a civil fine for asserted violations of Section 9(2).

It is Section 10(3) of the Act which sets forth the conduct that could comprise an unfair labor practice under the right-to-work amendments to PERA. Notably, in enacting this provision, the Legislature explicitly limited violations of Section 10(3) to claims alleging conduct by a respondent which has some discernible effect on the employment status of the charging party. Such a requirement is entirely in keeping with long-standing MERC precedent with respect to charges brought by an individual against his or her labor organization. The Commission has consistently held that its jurisdiction is limited to union conduct which impacts the charging party's terms and conditions of employment. For example, in *Ass'n of School and Community Service Administrators (Ann Arbor Public Schools)*, 1987 Mich Lab Op 710, an employee filed a charge against the union for having brought an action against him in small claims court to collect unpaid service fees. Although the contract did not contain any provision requiring nonmembers to pay dues, the union's by-laws stated that individuals who were in the bargaining unit, but who did not become members, were to be assessed an annual service fee. In dismissing the charge, the ALJ found that the charging party had failed to establish that any conditions of employment had been altered or sought to be altered by the union and that whether the union was entitled to collect a service fee from the charging party pursuant to its by-laws was a legitimate contract question to be decided by the civil court. The Commission adopted the ALJ's finding, concluding that dismissal was warranted on the basis that there was no effect on the charging party's employment.

Other cases in which MERC has explicitly held that there must be a discernible impact on an individual charging party's terms and conditions of employment in order to establish an unfair labor practice by a labor organization under PERA include: *AFSCME Council 25, Local 1583*, 27 MPER 48 (2014); *International Union, UAW*, 19 MPER 8 (2006); *AFSCME Council 25, Local 1918*, 1999 MERC Lab Op 11; *Organization of Classified Custodians*, 1996 MERC Lab Op 181; *Macomb County Prof Deputy Sheriff's Ass'n*, 1995 MERC Lab Op 595 (no exceptions); *AFSCME Local 118*, 1991 MERC Lab Op 617 (no exceptions); *Lansing Sch Dist*, 1989 MERC Lab Op 210; *City of Lansing*, 1987 MERC Lab Op 701; *City of Dearborn (Police Dispatchers Ass'n)*, 1985 MERC Lab Op 926; *MESPA (Alma Pub Sch Unit)*, 1981 MER Lab Op 149; *AFSCME, Local 1585*, 1981 MERC Lab Op 160; *DAEOE*, 1980 MERC Lab Op 1058 (no exceptions); *Warren Police Officers Ass'n*, 1977 MERC Lab Op 408 (no exceptions). It is a well-established principle of statutory construction that the Legislature is presumed to be aware of statutory interpretations by the courts and by the administrative bodies charged with statutory enforcement. *City of Detroit*, 27 MPER 6 (2013), citing *Gordon Sel-Way, Inc v Spence Bros, Inc*, 438 Mich 488, 505-506 (1991); *Melia v Appeal Bd of Michigan Employment Sec Com*, 346 Mich 544, 565-566 (1956); *Parker v Bd of Ed of Byron Center Pub Sch*, 229 Mich App 565, 570-571 (1998).

As described above, 2012 PA 349 amended PERA to prohibit a union from unlawfully restraining or coercing an employee in the exercise of his or her right to resign without regard to whether there is any direct impact on the individual's employment. However, the Legislature added that language to Section 9 of PERA, the "employee rights" section of the Act, and set forth an independent enforcement mechanism for violations of the right to refrain from concerted activity. With respect to unfair labor

practices under Section 10 of PERA, the right-to-work legislation amended the Act to explicitly prohibit an individual from being required to engage in or refrain from certain concerted activities as a condition of employment. I find that by structuring the 2012 amendments in this manner, the Legislature acted in recognition of, and intended to maintain, the Commission's longstanding requirement that an individual charging party prove that the union's conduct directly impacted their terms and conditions of employment in order to establish an unfair labor practice remediable under the Act.[21]

My finding that the Legislature, in enacting the right-to-work package of legislation, intended to limit the scope of unfair labor practice proceedings to those union actions having a discernible impact on employment is consistent not only with prior Commission case law, as set forth above, but also with the language of the 1963 Michigan Constitution, which is the express source of authority for the passage and enforcement of PERA. Article 4, Section 48 of the Constitution states, "The legislature may enact laws providing for the resolution of *disputes concerning public employees*, except those in the state classified civil service." (Emphasis supplied). In contrast to the federal Labor Management Reporting and Disclosure Act of 1959 (also known as the "Landrum-Griffin Act"), there is simply no constitutional or statutory authority for administrative regulation by the Commission of the internal affairs of unions or the relationship between a union and its members, other than to the extent there is an impact on conditions of employment. For that reason, the Commission has consistently declined to exercise jurisdiction over internal union disputes, such as those involving the election of officers or the retention of membership in the labor organization. Such claims may be asserted by individual employees in civil court as ordinary breach of contract claims; however, disputes of this nature are not subject to resolution by the Commission.

In the instant case, there is no credible evidence in the record to suggest that Respondent has prevented Beutler from resigning her membership in the Union or that its conduct in this matter had any discernible impact on her terms and conditions of employment with the LESA. There is no dispute that Beutler's September 9, 2013, resignation letter was sent to Respondent outside of any applicable window period for the

[21] In finding that the MEA unlawfully interfered with the right of charging parties to refrain from union activity, Judge Stern relies not on Sections 9(2) or 10(3) of PERA, but instead on Section 10(2)(a) of the Act, which provides that a labor organization shall not "[r]estrain or coerce public employees in the exercise of the rights guaranteed in section 9." The prohibition on restraint or interference with Section 9 rights, however, was not added to the Act as part of the "right-to-work" package of legislation. Rather, that language existed in the same form prior to 2012. There is no indication within 2012 PA 349 that the Legislature intended to confer new jurisdiction upon the Commission, especially given that other subsections added to PERA in 2012 specifically provide for independent remedial measures. For example, Section 10(5) makes any agreement in violation of Section 10(3) unenforceable, while Sections 9(2) and Sections 10(8) of the Act provide for civil fines. Similarly, Section 10(10) of PERA, as previously described, authorizes the filing of a civil suit for damages or injunctive relief by any person who has suffered an injury as a result of a violation of Section 10(3). In any event, Respondent, by the mere action of sending Beutler a letter requesting the payment of a claimed debt, cannot rationally be held to have engaged in "restraint or coercion" in violation of Section 10(2)(a) of the Act.

revocation of dues as set forth in the checkoff authorization which Charging Party voluntarily signed when she joined the Union in 2011. In responding to that resignation letter, the Union did not indicate that it was objecting to, or in any way rejecting, Beutler's request to become a nonmember. Rather, Respondent merely expressed its position that Charging Party remained obligated to pay Union dues until July of 2013 pursuant to the terms of the checkoff authorization. In fact, Charging Party has not made any financial contributions to the Union since September 20, 2013, when the employer stopped deducting dues from her paycheck. Although that was approximately 11 days after Beutler submitted her resignation, the record indicates that she did not notify the LESA of her resignation until much later. Moreover, it is undisputed that the September 20, 2013, paycheck from which the Union dues were deducted covered the period before she resigned.

Despite the fact that the Union considers Beutler to be in arrears, Respondent has not asked the employer to terminate her employment, nor could the Union lawfully take such action given that the 2012 amendments to PERA removed language from Section 10 which made it lawful for a public employer and labor organization to require, as a condition of employment, that all bargaining unit members share fairly in the financial support of the Union. Charging Party remained working for the LESA as a bus driver at the time of the hearing in this matter. There is nothing in the record to suggest that Respondent has attempted to discipline Beutler or that it has made any attempt to recover the unpaid Union dues in civil court. In fact, Gaffney testified credibly that Respondent has not yet even made any decision regarding how or whether to take action against a bargaining unit member for failure to pay dues. Even if the Union were to decide in the future to institute a collections action against Charging Party, that would not, by itself, constitute an unfair labor practice under Section 10 of the Act. Absent some effect on Beutler's employment, such litigation would constitute an ordinary dispute over the amount of delinquent fees allegedly owed to the Union which, as the Commission recognized in *Ass'n of School and Community Service Administrators (Ann Arbor Public Schools*), 1987 Mich Lab Op 710, is a matter outside of MERC's jurisdiction. See also *Macomb County Professional Deputy Sheriff's Ass'n*, 1995 MERC Lab Op 595 (no exceptions) (whether Charging Party is liable for delinquent dues is a question that is to be litigated in a court of competent jurisdiction and is outside the scope of PERA). For these reasons, I find that the charge filed by Beutler against Teamsters Local 214 fails to state a valid claim remediable under Section 16 of the Act.

Even if I were to fully embrace the analysis set forth by Judge Stern in *Saginaw* and her wholesale adoption of federal law, I would not find a violation of PERA based upon the facts presented in this case. As noted, the Board has recognized that even where there exists an unfettered "right to resign" from membership in a labor organization, individual employees may, pursuant to an express agreement with the union, nonetheless bind themselves to a contractual obligation to continue to pay dues and fees. *Lockheed*, 302 NLRB at 328-239; *National Oil Well*, 302 NLRB at 368. In *National Oil Well*, the Board found it lawful for a union to seek to enforce an ongoing financial obligation where the employee voluntarily agreed to pay dues for a defined period of time and irrespective of union membership. In the instant case, Beutler similarly entered into an

agreement with Respondent to pay dues on a renewable basis, subject to timely cancellation. As in *National Oil Well*, the agreement signed by Beutler expressly provides that such authorization "is voluntary and is not conditioned on my present or future membership in the Union." There is no evidence in the record suggesting that Beutler was coerced or pressured into signing the agreement, nor is there any basis upon which to conclude that the language of the agreement was ambiguous or misleading. In fact, the membership application portion of the agreement explicitly recognized that employees of the LESA are free to elect not to become a member of the Union. Under these circumstances, I find that Respondent did not act unlawfully by continuing to assert that Beutler has an obligation to pay union dues and, for this separate reason, recommend dismissal of the charge.

Charging Party asserts that the 2012 amendments to PERA established an unfettered and unwaivable "right to refrain" from concerted activities which includes the right to stop paying dues at any time regardless of any agreements a public employee may have entered into with the union to the contrary and irrespective of any impact on terms and conditions of employment. Accepting such an argument would yield patently incongruous results. As previously noted, Section 10(2)(a) of PERA gives the union the right to prescribe its own rules with respect to the "acquisition" of membership, and the Court in *Pattern Makers'*, 473 US at 109, specifically recognized that similar language in the NLRA covers union rules "involving admission" of members. See also *AFSCME, Local 118*, 1991 MERC Lab Op 617 (no exceptions) (the establishment of rules for union membership is an internal matter which the Commission does not regulate absent an impact on employment); *Warren Police Officers Ass'n*, 1977 MERC Lab Op 408 (no exceptions) (the union has the authority to dictate the terms of membership). Accordingly, a Union could lawfully deny membership from the outset to a new employee who refuses to sign an agreement requiring that individual to continue to pay dues unless or until he or she makes a timely revocation of that obligation.[22] Yet, under Charging Party's theory, it would be an unfair labor practice under PERA for a labor organization to attempt to enforce the same policy on an existing member merely by demanding the remittance of unpaid dues. It is a fundamental canon of statutory construction that legislation should be construed so as to prevent absurd results, injustice, or prejudice to the public interest. *McAuley v General Motors Corp*, 457 Mich 513 (1998).

I have carefully considered all other arguments set forth by the parties in this matter and conclude that they do not warrant a change in the result. Despite having been given a full and fair opportunity to do so, Charging Party has failed to establish that the Union engaged in an unfair labor practice in violation of Section 10 of PERA by asserting that Beutler has a continuing financial obligation to pay Union dues. Accordingly, I conclude that the charge must be dismissed and recommend that the Commission issue the following order.

[22] This conclusion is unrelated to any obligation the union may otherwise have to fairly represent nonmembers on issues within the workplace.

RECOMMENDED ORDER

The unfair labor practice charge filed by Pauline Beutler against Teamsters Local 214 in Case No. CU13 I-037; Docket No. 13-011918-MERC, is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

David M. Peltz
Administrative Law Judge
Michigan Administrative Hearing System

Dated: October 3, 2014