STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

WEST BRANCH-ROSE CITY EDUCATION ASSOCIATION, and MICHIGAN EDUCATION ASSOCIATION,
Labor Organizations-Respondents,

Case No. CU98 J-50

-and-

FRANK DAME,
An Individual Charging Party.

/

APPEARANCES:

White, Przybylowicz, Schneider & Baird, P.C., by James J. Chiodini, Esq., for Respondents

Mark L. Fischer, Esq., for Charging Party

DECISION AND ORDER

On January 20, 2000, Administrative Law Judge James P. Kurtz issued his Decision and Recommended Order in the above-entitled matter, recommending dismissal of an unfair labor practice charge filed by Individual Charging Party Frank Dame against Respondents West Branch-Rose City Education Association (hereafter "WB-RCEA") and Michigan Education Association (hereafter "MEA") pursuant to Section 10 of the Public Employment Relations Act (hereafter "PERA"), 1965 PA 379, as amended, MCL 423.210; MSA 17.455(10). The Decision and Recommended Order of the ALJ was served upon the interested parties in accord with Section 16 of PERA. On February 28, 2000, Charging Party filed timely exceptions to certain findings of the ALJ, and to his recommendation that the charge be dismissed. Respondents filed a timely brief in response to the Union's exceptions on March 27, 2000.

The WB-RCEA is the collective bargaining representative for a unit of professional and instructional personnel employed by the West Branch-Rose City Area School District (hereafter the "Employer"). The WB-RCEA is a local affiliate of the MEA and the National Education Association, and membership in both of the parenting bodies is required of all WB-RCEA members. Pursuant to the MEA constitution and by-laws, membership is on a "continuing basis" and may be terminated at the request of a member upon the submission of a written request to the Association "between August 1 and August 31 of the year preceding the designated membership year."

The most recent collective bargaining agreement between the WB-RCEA and the West Branch-Rose City Area School District covers the period from July 1, 1997 to June 30, 2000. That contract includes a standard union security clause requiring all members of the bargaining unit to either join the Union or pay a service fee which "shall not exceed the amount of association dues collected from association members." The agreement also contains a dues checkoff provision, pursuant to which any bargaining unit member may authorize the Employer to deduct the service fee from his or her paycheck.

Charging Party became employed by the West Branch-Rose City School District as a high school English teacher in 1988. On September 26th of that year, he signed a document entitled, "Continuing Membership Application" which authorized the Employer to periodically deduct local, MEA and NEA dues, assessments and contributions from his paycheck unless he revoked the authorization "in writing between August 1 and August 31, of any year." Charging Party remained a full union member for almost ten years. In the spring of 1998, he decided to resign from the Union for "ideological reasons." On April 8, 1998, he sent a letter to the president of the WB-RCEA terminating his membership and objecting to the collection and expenditure of any fee other than his "pro rata share of the union's costs of collective bargaining, contract administration, and grievance adjustment," as provided by federal case law. The Union, citing the one-month window period provision in the voluntary membership application which Dame signed ten years earlier, refused to accept Charging Party's resignation.

In a letter dated May 21, 1998, the Union informed Dame that he was contractually obligated for the balance of dues owed for the remainder of the 1997-1998 membership year and that the Association "might institute a collection action for the balance due" if timely payment of $28.50 was not made. However, the Union assured Dame that he would continue to receive all the rights and benefits of membership for the entire school year, and that no term or condition of employment would be affected by his status as a member or nonmember in the Association. The following day, the Union asked the Employer to cease deducting dues from Dame's paycheck. Thereafter, no dues were deducted by the school district, and the Union made no further attempt to collect the unpaid balance. In July of 1998, Dame sent one dues payment to the Union in the amount of $28.50. On August 20, 1998, Dame sent a letter to the Union resigning his membership at all levels of the MEA. He officially became a service fee payer in September of 1998.

On October 5, 1998, Dame filed an unfair labor practice charge alleging that Respondents violated their duty of fair representation by refusing to immediately honor his attempt to resign from the Union, and by maintaining rules which restricted his right to become a service fee payer and to challenge the method by which dues are calculated. The charge also asserted that the Union interfered with, restrained and coerced Dame in the exercise of his PERA rights by making unlawful threats and interrogating him with respect to his protected activities. In recommending dismissal of the charges, the ALJ concluded that the one-month window period was a reasonable restriction on the timing and manner of resignation, and that Charging Party had voluntarily agreed to be bound by this restriction when he signed the "Continuing Membership Application." With respect to the remainder of the allegations, the ALJ found no evidence that the Union had unlawfully interrogated Charging Party or otherwise restrained or coerced Dame in violation of PERA.

Charging Party's exceptions pertain solely to the Union's maintenance and enforcement of the annual one-month window period on resignations. Charging Party contends that the imposition of a limitation on a member's ability to resign from the Union and become a fee objector constitutes a violation of the First Amendment guarantees of free speech and association. Charging Party requests that we issue an order requiring the MEA to cease and desist from maintaining and enforcing the window period provision throughout the State, and that we order the Union to post appropriate notices announcing the cessation of this requirement. In response, the Union argues that it has a constitutional right to establish rules governing its membership, and that its maintenance of the one-month window period is supported by valid administrative justifications. In addition, Respondents contend that the unfair labor practice charge should be dismissed because the record establishes that Dame's terms and conditions of employment were not in any way impacted by the Union's actions in this matter. After carefully examining the record, including the transcript, exhibits and briefs filed by the parties, we agree that the ALJ's decision recommending dismissal of the charge was erroneous, but for reasons other than those urged by Charging Party.

In order to distribute fairly the cost of collective bargaining activities, Michigan, like many states, has adopted an agency shop clause for public sector employees. See *Abood v Detroit Board of Education*, 431 US 209, 222; 97 S Ct 1782; 52 L Ed 2d 261 (1977). Under Section 10(1)(c) of PERA, bargaining unit employees may be required, as a condition of employment, to pay the exclusive bargaining representative a service fee, otherwise known as an agency shop fee or fair share fee, equivalent to the amount of dues uniformly required of union members. MCL 423.210(1)(c); MSA 17.455(10)(1)(c). Although such clauses implicate the First Amendment rights of nonmembers, both by forced subsidization of ideological views and by interference with the freedom of association, *Chicago Teachers Union v Hudson*, 475 US 292, 301; 106 S Ct 1066; 89 L Ed 2d 232 (1986), they are nonetheless constitutional because of the strong governmental interest in collective bargaining and industrial peace. *Ellis v Railway Clerks*, 466 US 435, 455-456; 104 S Ct 1883; 80 L Ed 2d 428 (1984); *Abood, supra* at 222. To preserve that constitutionality, however, the service fees of objecting nonmembers may only be used to finance expenditures germane to collective bargaining, such as expenses relating to contract negotiation, contract administration, and grievance adjustment. *Abood, supra* at 302. See also *Bridgeport-Spaulding Community Schools*, 1986 MERC Lab Op 1024.

In an affidavit attached to the unfair labor practice charge filed in the instant case, Dame asserted that he never received notification of the Union's policy concerning the filing of objections to the use of the agency service fee for political/ideological expenditures. Dame repeated that allegation several times at the hearing. Specifically, Dame testified that he initially joined the Union because he felt that, as a teacher, it was his "obligation" to do so. In addition, Dame testified that he was not aware of the Union's one-month window period on resignation prior to April of 1998, when he tried unsuccessfully to terminate his membership. Respondents offered no evidence to rebut Dame's testimony. In fact, counsel for the Union conceded that Dame never received written materials documenting the Union's policy concerning a unit member's right to object to the use of his or her service fee for purposes unrelated to collective bargaining. Although the collective bargaining agreement submitted into evidence contains language concerning agency fee payer status and nonmember objector rights which would normally be sufficient to notify employees of their legal

rights and obligations, that contract was not executed until September 5, 1997, after expiration of the last open window period prior to Dame's attempted resignation. Similarly, the copy of the MEA by-laws introduced into evidence, which make specific reference to the one-month window period, is dated "April 1997," at least nine years after Charging Party first became a member of the Union, and there is nothing in the record establishing that language pertaining to the window period was included within any prior version of the by-laws. Furthermore, there is no evidence suggesting that Dame was ever provided with, or even given access to, a copy of the by-laws prior to his attempted resignation.

In recommending dismissal of the charges, the ALJ relied upon the "Continuing Membership Application" which Dame signed upon his hiring in 1988. However, that document does not in any way indicate that the district's employees have the option to decline membership in the Union and become an agency fee payer. It is true that the "Continuing Membership Application" makes reference to a one-month window period in August of each year. However, that language only restricts Dame's ability to revoke his or her dues checkoff authorization. There is nothing in the document limiting Dame's ability to resign from the Union. The National Labor Relations Board (hereafter "NLRB") has found that a dues check-off authorization constitutes an agreement between the employee and the employer as to the precise method by which union dues are to be paid, and that such an agreement does not itself obligate an employee to remain a full union member. See *Schweizer Local 1752 (UAW)*, 320 NLRB 528; 151 LRRM 1286 (1995), aff'd sub nom *Williams v NLRB*, 105 F2d 787 (CA7 1986) (resignation of membership by an employee who is obligated to pay dues under a lawful union-security clause does not privilege the employee to make an untimely revocation of his checkoff authorization). See also *Polymark Corp*, 329 NLRB No. 7; 162 LRRM 1033 (1999); *IBEW Local 2088 (Lockheed Space Operations)*, 302 NLRB 322, 329 n 26; 136 LRRM 1321 (1991). Based upon the record before us, we conclude that the Union failed to notify Charging Party of his right to refrain from joining the Union, and that Respondents failed to provide Dame with information concerning its own internal rules regarding continuing membership obligations. Under such circumstances, it was improper for Respondents to place impediments on Charging Party's ability to immediately resign his membership in the Union and become a service fee payer.

The Supreme Court has recognized that it violates precepts of voluntary unionism to bind a bargaining unit member to a promise that he or she did not knowingly make. See e.g. *Pattern Makers League v NLRB*, 473 US 95, 131; 105 S Ct 3064; 87 L Ed 2d 68 (1985) (Blackmun, J. dissenting); *Machinists v NLRB*, 412 US 84, 89; 93 S Ct 1961; 36 L Ed 2d 764 (1973). For example, the Court has agreed with the National Labor Relations Board (hereafter "NLRB") that it is an unfair labor practice for a union to attempt to collect a fine against a member who resigned from the union during a strike when it was not made explicit to that member that, as a condition of membership, he had to agree not to resign during the strike. See *Machinists v NLRB, supra*. Similarly, the NLRB has held that a union violates its duty of fair representation when, upon first seeking to obligate a unit employee to pay dues under a union security clause, it fails to provide notice to that employee that the only condition of employment is the payment of dues and fees relating to representational purposes. See e.g. *California Saw & Knife Works*, 320 NLRB 224 (1995), enf'd sub nom *Machinists v NLRB* 133 F3d 1012 (CA 7 1998); *Paperworkers Local 1033 (Weyerhaeuser Paper Co)*, 320 NLRB 349 (1995), rev'd on other grounds sub nom *Buzenius v NLRB* 124 F3d 788 (CA 6 1997), vacated sub nom *United Paperworkers International Union v Buzenius*, 525 US 979; 119 S Ct 442;

142 L Ed 2d 397 (1998).

Under the circumstances presented in this case, we conclude that Respondents violated their duty of fair representation, in violation of Section 10 of PERA, by refusing to allow Charging Party to terminate his membership in the Union upon his initial request to do so in April of 1998. Because our finding is premised upon the fact that Respondents failed to provide Dame with notice of his rights and obligations under both PERA and the MEA constitution and bylaws, we need not address the broader issue concerning the legitimacy of the Union's policy restricting the ability of its members to resign. As a remedy in this case, we order Respondents to reimburse Dame for that portion of the dues collected from him after he attempted to resign and that were spent for nonrepresentational activities, with statutory interest, See *Carlon, A Lamson & Sessions Co*, 328 NLRB No. 154; 161 LRRM 1019 (1999) (even unions that unlawfully fail to inform employees of their *Beck* rights are still entitled to collect dues from them for expenses related to representational activities). In addition, we order Respondents to ensure that the MEA bylaws are easily accessible to all Union members, and/or explicitly notify each member of the existence of the one-month window period on resignations. Because Charging Party has not excepted to the remainder of the ALJ's findings and conclusions of law, we hereby adopt, in part, the recommended order of the Administrative Law Judge as it pertains to allegations that the Union interfered with, restrained and coerced Charging Party in the exercise of his PERA rights by making unlawful threats and interrogating him with respect to his protected activities.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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Maris Stella Swift, Commission Chair

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Harry W. Bishop, Commission Member

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C. Barry Ott, Commission Member

Dated:_____

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

WEST BRANCH-ROSE CITY EDUCATION ASSOCIATION,
and MICHIGAN EDUCATION ASSOCIATION (MEA),
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- and - Case No. CU98 J-50

FRANK DAME,
Individual Charging Party
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APPEARANCES:

White, Przybylowicz, Schneider & Baird, P.C., by James J. Chiodini, Atty, for the Respondents
Mark L. Fischer, Atty, for the Individual Charging Party

DECISION AND RECOMMENDED ORDER
OF
ADMINISTRATIVE LAW JUDGE

This case was heard at Detroit, Michigan on March 11, 1999, before James P. Kurtz, Administrative Law Judge for the Michigan Employment Relations Commission, pursuant to the service of a complaint and notice of hearing dated October 7, 1998, issued under Section 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.216, MSA 17.455(16). Based upon the record, and the post-hearing briefs filed on June 21, 1999, the undersigned makes the following findings of fact, conclusions of law, and recommended order pursuant to Section 16(b) of PERA, and Section 81 of the Administrative Procedures Act of 1969, MCL 24.281, MSA 3.560(181):

The Unfair Labor Practice Charge and Issues:

Individual Charging Party, Frank Dame, through his attorney, filed this charge on October 5, 1998, against the above-named labor organizations, herein collectively referred to as the Association or the Union. The charge alleged generally that since on or about April 8, 1998, the Respondent Union had violated its duty of fair representation under PERA by refusing to honor his unconditional request that his membership in the Association be terminated, and by maintaining rules or contract provisions that unlawfully restricted his rights of resignation and the calculation of union dues. These restrictions were alleged to violate the Charging Party's procedural and substantive rights granted by *Chicago Teachers Union v Hudson*, 475 US 292, 121 LRRM 2793 (1986), and *Abood v Detroit Bd of Ed.*, 431 US 209, 95 LRRM 2411 (1977); see also *Lehnert v Ferris Faculty Ass'n*, 500 US 507, 137 LRRM 2321 (1991); and *Communications Workers v Beck*, 487 US 735, 128 LRRM 2729 (1988). The charge further alleged that the Union interfered with, restrained, and coerced the

Charging Party in the exercise of his PERA rights by making unlawful threats and interrogating him.

The Association filed a motion for a bill of particulars on November 4, 1998, and a response was filed by Charging Party on November 20. The pleadings, record, and briefs establish that the only issue being litigated in this case in regard to Charging Party's *Hudson* or *Beck* rights is the refusal of the Union to honor his request for withdrawal until the open period in August of each year, as provided by the standard dues deduction agreement and the constitution and bylaws of the Respondent Michigan Education Association (MEA). As will be evident from the facts, the actual problem is not the limitation on the resignation as such, but it is the consequent delay in the reduction of the dues that follows from the resignation from membership in a labor organization. With regard to the allegations of restraint and coercion, the record and briefs are concerned with three incidents: an alleged threat by the MEA uniserv director, Rosemary Walters, in a letter to Charging Party Dame dated May 21, 1998; and two alleged incidents of interrogation by a fellow employee in August 1998. This decision must deal only with these specific issues that were properly noticed, litigated, and briefed by the two parties.

The pleadings and briefs contain various broad statements relating to the rights of employees to withdraw membership in their bargaining representative, or the rights and obligations of individuals or labor organizations with respect thereto. Any other allegations or expositions of union or employee rights, such as the right to challenge the calculation of the service fee by procedures other than arbitration provided by the Union, or the various First Amendment rights of the Union or employees, are considered legal statements or arguments and are not matters that were noticed and properly placed in issue for this Commission's decision, either before or at the hearing. Thus, there will be no extended treatment of these extraneous matters referred to in passing in the pleadings or briefs. I have concluded, in any event, after examination and consideration that these matters would not affect the results in this case. See *Bridgeport-Spaulding Comm. Schools*, 1986 MERC Lab Op 1024, 1028-1032, which discusses the role and authority of this Commission in these types of proceedings.

Factual Findings-Background:

Frank Dame has been employed by the West Branch-Rose City Area School District as a high school English teacher since 1988. The exclusive collective bargaining representative for the professional and instructional personnel employed by the District is the West Branch-Rose City Education Association (WB-RCEA). The collective bargaining agreement between the School District and the WB-RCEA contains the usual union security and dues checkoff provisions. In addition, the contract contains a clause referring to the *Hudson* case, and to the Union's established "Policy Regarding Objections to Political-Ideological Expenditures," which policy and procedures are applicable to non-union bargaining unit members and to the determination of the service fee owed by nonmembers. After becoming employed, Dame signed on September 26, 1988, a "Continuing Membership Application," making him a member of the Local, Michigan, and National Education Association (NEA). On the same form he also authorized the deduction by the School District of Local, MEA, and NEA dues, assessments and contributions, "unless I revoke this authorization in writing between August 1 and August 31, of any year."

Under what is referred to as a "unified membership structure," membership in the WB-RCEA requires membership in its parent bodies, the MEA and the NEA.[1] Under the constitution and bylaws of the MEA, membership is on a continuing basis, and any request to terminate such membership must be signed and submitted by the member at the end of the normal school or academic year between August 1 and 31. August is also the last month of the Union's membership year and the final month of the MEA fiscal year. The suggestion of the Union that the MEA should be dismissed as a Respondent, since it is not the exclusive bargaining representative of the teaching employees, I find to be without merit. The MEA in this case is the principal recipient of the dues paid by members of the WB-RCEA, and the actions and procedures of the MEA under the unified membership concept have been placed in issue by this charge. The cases cited by the Association, *Zeeland Ed. Ass'n*, 1996 MERC Lab Op 499, 505, 512, and *South Redford Ed. Ass'n*, 1989 MERC Lab Op 803, 812, involved the processing of grievances at the local affiliate level, and the conduct of the MEA itself was not directly in issue.

The designated August resignation period is dictated by a number of factors, in addition to it being the end of the academic year and the last month of the MEA fiscal year. The annual arbitration of the appropriate service fee that the MEA can charge agency fee payers for matters associated with collective bargaining and contract enforcement under the Supreme Court rulings noted above must be completed before the new fiscal and academic years begin on September 1. This determination of the service fee requires an expensive and complex audit, which is estimated to cost between $1,500 and $3,000 each year. Most locals or affiliates of the MEA forgo the expense of such an audit, since they have so few service fee payers and, like the WB-RCEA in this case, waive any involuntary service fee from agency fee payers. The budget for the new fiscal year depends in large part on the August 31 membership count, since by that date most school districts have typically finalized their hiring decisions for the new school year. This membership count determines who will receive the liability insurance, which the MEA provides for its membership on a yearly basis, and it also determines the amount in premiums the MEA must pay for that school year. These same membership rolls also determine the eligibility list for elections at the various levels of the Union during the year.

The MEA has prepared a packet for unit employees who choose not to become members, where there is a collective bargaining agreement containing a provision that requires the employee to either join the Union or pay a service fee. This packet is intended to comply with the various state and federal court rulings relative to providing notice of the rights of nonmember service fee payers. This packet contains the MEA policy and procedures for those objecting to political-ideological expenditures, including the American Arbitration Association rules for the impartial determination of the agency fee. The packet also contains the information and calculation, including financial statements, of the service fee for the MEA, NEA, and, if applicable, the Local Association. Also included in the packet is a service fee election form, a membership application form, and a payroll deduction form. According to the Respondents, these procedures, including the August resignation period, have been approved, at least implicitly, in court litigation, citing *Lehnert v Ferris Faculty Ass'n*, 707 F.Supp.1490, 133 LRRM 2244 (1988), *aff'd* 893 F2d 111, 133 LRRM 2257 (6th Cir,

[1]The NEA is not a Respondent in this case.

1989), *cert. den.* 496 US 905, 134 LRRM 2368 (1990).

Withdrawal of Membership:

In the spring of 1998 Charging Party decided to resign from the Union for ideological reasons. He received information about his rights from his Congressman, and under date of April 8, 1998 he sent a letter to the local Association president, with a copy to the School District, resigning immediately as a member of the MEA. He objected in the letter to the collection and expenditure of any fee other than his "pro rata share of the union's costs of collective bargaining, contract administration, and grievance adjustment," as provided by federal case law. The letter was received by the local president on April 15, 1998, and he turned it over to the MEA uniserv representative, Rosemary Walters. Shortly thereafter Dame received a copy of the local Union newsletter called "Above Board." The newsletter is edited by a fellow teacher, Katherine Egan, who does not hold any Union office, but who is married to the local Union president, Michael Egan. Dame wrote to Kathy Egan on April 27, questioning his receipt of the newsletter if he was not a member. She wrote back that the newsletter was for members only, and added: "It is unclear when your membership ends. Mike said it may not be until the end of the year."

A short time after April 27 Dame called Walters to check on the status of his resignation from the Union. She said she was unclear on such matters, and that she did not know exactly when the resignation would be accepted or if it were valid. She promised to check into the matter and get back with Dame. Dame called her a second time, and Walters apologized for the delay. In a third conversation in early May, Walters told Dame that he could resign only during the month of August based on his 1988 membership application, and she cited the *Hudson* case as the authority for the Union's position. Under date of May 4 Walters forwarded a copy of Dame's signed 1988 membership application to him, as he had previously requested.

On May 21 Walters sent Dame a written statement of the Union's position on his desire to resign from the Association, with copies of the MEA constitution and bylaws. This letter explained that under Dame's voluntary application for membership in the Association, he was contractually bound to continue his membership until he revoked it in writing between August 1 and August 31 of any year. In return, Walters noted that Dame received all the rights and benefits of membership for the entire school year, including his insurance coverage which could not be canceled in midyear for a refund. The letter stressed that no term or condition of employment would be affected by his status as a nonmember. Walters stated that she had requested that the School District cease dues deductions, but that Dame would be obligated for the balance of dues owed to the Association for the remainder of the 1997-1998 membership year. At that time she noted that Dame owed the Association one dues payment, which is deducted from each biweekly pay, and she asked that it be paid by June 20. She warned that if timely payment was not made, "the Association may institute a collection action for the balance due." The letter closed with the procedure Dame should follow to resign his membership in the WB-RCEA, MEA/NEA, by sending the appropriate notice between August 1 and 31, and that he would thereafter receive the annual *Hudson* notice setting forth his service fee obligation to the Association.

No further dues were deducted from Dame's pay after the May 15 pay date based upon a May

22 request of Walters to the School District. The Union made no attempt to collect further dues from Dame. In July, Dame sent one dues payment to the Association, but no other payments were made by him. On August 20, Dame sent a letter to the local president, resigning as a member at all levels of the MEA. He subsequently received the Union's packet of materials outlining his service fee obligation and setting forth his substantive and procedural rights under the law, including the right to challenge the calculation of the service fee in arbitration. Dame became a service fee payer beginning in September. On the Union's 1998-1999 "Service Fee Election Form," Dame elected to pay the Association-determined reduced service fees of the MEA and NEA, with his handwritten caveat that he reserved the right to challenge the respective amounts in a pending class action lawsuit against the Association. He elected not to pay any dues or fees to the WB-RCEA.

Union Restraint or Coercion–Threat--Findings and Conclusions:

The alleged threat in this case is contained in the May 21, 1998 letter of the MEA uniserv representative Walters to Dame regarding the cessation of the checkoff of his dues and the requirement that he pay directly to the Union the amounts owed for the balance of his 1997-98 membership year. Walters asked Dame to send the next regular deduction to the Union by June 20, and then made the alleged unlawful threat, "If payment is not received by that date, the Association may institute a collection action for the balance due."

If the quoted statement is to be construed as a threat, it is not related to the restraint and coercion banned by Section 10(3)(a)(i) of PERA, which protects employees in the exercise of their Section 9 rights with respect to collective negotiation or bargaining with their employer. There is nothing in this statement or the actions of the Union that in any way impacts the terms or conditions of Dame's employment, or that would affect the tenure of his employment with the School District, so as to raise an issue under Section 10(3) of PERA. Compare, for example, the decision of ALJ Bixler in *Redford Union Ed. Ass'n*, 1978 MERC Lab Op 304, 308-310, where the union was found to have violated PERA by causing the employer to reduce the work assignments of a substitute teacher in retaliation for his having worked for another school district during a strike.

The statement of Walters involves only the individual, personal obligation of Dame to pay any amounts owed to the Union under its bylaws and constitution, as permitted by Section 10(2) of PERA. If those amounts are not paid, they are collectable in a court of law like any other contractual or legal obligation. *Ass'n of School Administrators (Ann Arbor P.S.)*, 1987 MERC Lab Op 710, 712-713, 716, wherein the Commission found no violation of PERA by the union's small claims court action for unpaid service fees, as long as there was no effect on the employment status of the nonmember; see also *Detroit Ass'n of Educational Office Employees*, 1980 MERC Lab Op 1058, 1063-1064, where no violation of PERA was found when a labor organization required members to maintain their membership status during the time that a rival organization was seeking to represent the employees; *cf. Macomb County Prof. Deputy Sheriff's Ass'n*, 1995 MERC Lab Op 595, 598. Under these cases, a labor organization has as much right to protect its organizational interests in a lawful manner relative to nonmembers, decertification, and the like, as does an employer facing an organizational campaign. Accordingly, no violation of PERA can be predicated on the above statement of Walters.

Interrogation–Findings and Conclusions:

The incidents of alleged interrogation involved the editor/reporter of the local Union newsletter, Kathy Egan, who as noted above is married to the president of the WB-RCEA. In August 1998, about the time Dame submitted his second resignation letter to the Union, he held a meeting for other bargaining unit members to discuss the procedure for resigning from the Union. After a staff meeting of teachers held on August 24, Egan approached Dame and questioned him about the meeting and what she heard was a "new union." Egan allegedly asked who attended the meeting, why everybody was not invited, where did Dame get his information, who intended to resign, and what right he had to tell others to resign. There was also some exchange in regard to their particular religious views. Dame made some reference to a web site, and Egan asked him to get the location for her.

The next day, August 25, a day when teachers were preparing for school but no students were present, Egan approached Dame at his classroom to get the web site location referred to the day before. Dame said he did not have the information, and if she wanted to talk Union business he wanted to have his Union representative present. Kathy Egan left and returned a few minutes later with her husband, Mike Egan. A discussion ensued between Kathy Egan and Dame, which became somewhat heated. Mike Egan persuaded his wife to leave, and after she left Mike Egan and Dame talked for about an hour or hour and a half about *Hudson* rights, according to Dame. Kathy Egan testified to the two interviews with Dame, which agreed in broad outline with Dame's testimony, but differed as to certain specifics; for example, she denied ever asking who attended Dame's meeting of employees regarding resignation from the Union, or asking who wanted to resign from the Union. These differences are not important for the conclusions herein.

The analysis and conclusions relative to the alleged interrogation are much the same as those relating to the Walters threat treated above. Under PERA and similar labor relations statutes, interrogation of itself does not violate the statute, but it must be found to be coercive in the sense that it interferes with the organizational rights of employees. Compare *Firestone Tire and Rubber Co.*, 1973 MERC Lab Op 494, 502; and *St. Lawrence Hosp.*, 1971 MERC Lab Op 1173, 1176-1178, 1183; with *Betty Jane Bar*, 1971 MERC Lab Op 57, 63-64; and *Maverick's Drive In*, 1967 MERC Lab Op 504, 513-514. If one wants to characterize Kathy Egan's questioning of Dame in August of 1998 as interrogation, it is not interrogation that comes within the restraint and coercion prohibition of Section 10(3)(a)(i) of PERA. The questions involved intra union affairs, and had nothing to do with Dame's wages, hours and working conditions, or his tenure of employment within the meaning of Section 9 of PERA.

Further, Kathy Egan is not an officer of the WB-RCEA, and there is no factual basis for finding that she acts as an agent of the Union in her capacity as editor of its local newsletter. Thus, her confrontations with Dame are employee to employee, and they convey no responsibility and are not necessarily attributable to the bargaining representative, the WB-RCEA. Even if she were considered to be an agent of the Union, no violation of PERA can be predicated upon her conduct. In addition to the fact that Dame's employment rights were unaffected by the confrontations, a labor organization has as much right to defend its representational interests, as Dame has in attempting to undermine them by soliciting or aiding other employees in withdrawing from the Union. The Union

need not sit idly by while employees try to undermine its status or put it out of business, just as an employer may actively oppose or campaign against the unionization of its employees. See, for example, *Lapeer County General Hosp.*, 1974 MERC Lab Op 488, 495-498; and *Black Angus (Clinton)*, 1974 MERC Lab Op 29, 32-34. Charging Party's contention that he felt intimidated and verbally abused by the actions of Kathy Egan is only a reflection of the fact that one's interjection into internal union affairs and politics is not for the fainthearted. Internal union matters are beyond the scope of this agency's regulation, but are left to the employees and/or members to regulate. *Private Industry Council*, 1993 MERC Lab Op 907, 910; *Operating Engineers, Local 547*, 1975 MERC Lab Op 910, 917; *Battle Creek Police Dep't*, 1974 MERC Lab Op 698, 702.

Discussion and Conclusions–August Resignation Period:

The major issue in this matter is the Union's restriction in its bylaws and constitution, and in its membership application, that limits the withdrawal of membership and the reduction of dues to one month each year, that is, at the end of its membership year in August. There is nothing in PERA or the case law relied on by the parties which would preclude a labor organization from placing reasonable restrictions on the timing and manner of withdrawal of an employee from membership. The Supreme Court cases cited by the Charging Party, *Pattern Makers v NLRB*, 473 US 95, 119 LRRM 2928 (1985), and *NLRB v Textile Workers, Local 1029*, 409 US 213, 81 LRRM 2853 (1972), involved the fining of members who attempt to withdraw during a strike, and did not concern the validity of an annual window period for withdrawal from membership. In fact, such window periods have been upheld by the federal courts, if the union "has offered valid administrative justifications for its system." *Nielsen v Machinists Lodge 2569*, 94 F3d 1107, 153 LRRM 2161, 2169 (7th Cir, 1996), which contains an excellent survey and analysis of the federal case law dealing with this issue, and mildly chides the National Labor Relations Board (NLRB) for its inconsistent position on the issue.

The Union in this case has amply demonstrated the reasonableness and necessity of the annual open window period for withdrawal of membership tied to the last month of its membership and fiscal years, and at the end of the normal school year. The need for a stable membership figure for such purposes as budgeting, programming, purchasing professional liability insurance, preparing voting lists, and the like, has been clearly demonstrated. The complicated and costly process of determining the appropriate service fee for each year, which is the subject of much of the federal litigation cited above, would be further complicated by the greater fluctuation in membership entailed by resignations throughout the year. Thus, the Union has provided adequate and valid "administrative justifications" for limiting membership withdrawals to the month of August each year. Therefore, the Union did not in this case violate its duty of fair representation owed to Charging Party by making him wait the four months from April to August to withdraw from the Union and receive the agency fee reduction in his dues.[2]

A further reason for dismissal of this charge is based on the voluntary agreement or contract

[2]It is noted that Charging Party made only one dues payment after May 15, 1998, and the Union made no effort to collect the balance, so it is likely that he suffered little or no monetary damage under the facts in this case.

entered into by Charging Party when he joined the Union in 1988, wherein he agreed to the continuous membership and annual August withdrawal provisions as part of his membership obligations. It ill behooves this agency to play the role of "Big Daddy" government and to be a party to assisting employees in breaking their legitimate and reasonable commitments in the name of protecting them from certain expenditures by their bargaining representative. Employees, including Charging Party, are perfectly capable and competent to enter into contracts like the one in issue and to abide by their reasonable terms without intervention and interference by the State or this agency. Dame honored the contract for 10 years before becoming alarmed by certain positions of the Union, and while the undersigned can understand his reasons for withdrawal, no adequate reason has been advanced for repudiating his agreement relative to when withdrawal from the Union would be accepted.

Brief mention must be made of the latest foray of the NLRB into this legal morass by its 3-2 decision in *Polymark Corp.*, 329 NLRB No.7, 162 LRRM 1033 (1999), in which the majority held that a labor organization violates its duty of fair representation by maintaining a window period limitation on the filing of *Beck* objections by employees who have recently resigned, "because it operates as an arbitrary restriction on the right to resign from union membership." This decision with its four opinions provides justification for the dicta leveled at the NLRB by the Seventh Circuit in the *Nielsen* case, noted above. The dissenting opinion in *Polymark* cites and follows the *Nielsen* decision, and it is the better-reasoned approach to the problem. Rather than take the absolutist position, the dissent held that a window period places no actual restriction on the right of a member to resign from a labor organization at any time for any reason, but it merely limits the time at which the resigning member may obtain a reduction in the fees charged as a nonmember. The dissent also held that the majority failed to take into account the legitimate interests of unions in administrative efficiency and simplicity, as required by federal court decisions setting forth the duty of fair representation by labor organizations.

In conclusion, the procedures and actions of the Union relative to the resignation from membership of Frank Dame did not violate its duty of fair representation, including, but not limited to, the requirement that membership may be withdrawn and the payment of a service fee requested only on an annual basis during the month of August; and the Union or its agents and representatives did not engage in unlawful threats or interrogation of Dame within the meaning of the restraint and coercion provisions of PERA. Accordingly, I recommend that the Commission issue the following order:

ORDER DISMISSING CHARGE

The unfair labor practice charge filed in this matter is hereby dismissed.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

James P. Kurtz

Administrative Law Judge

Dated: _____