STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

LANSING SCHOOL DISTRICT,
Public Employer - Respondent,

Case No. C05 B-029

- and -

LANSING EDUCATIONAL ASSISTANTS, MEA/NEA,
Labor Organization - Charging Party.
_____/

APPEARANCES:

Clark Hill PLC, by John L. Gierak, Esq., and Reginald M. Turner, Esq., for Respondent

White, Schneider, Young and Chiodini, PC, by Kathleen Corkin Boyle, Esq., for Charging Party

DECISION AND ORDER

On May 2, 2006, Administrative Law Judge (ALJ) Julia C. Stern issued her Decision and Recommended Order in the above matter finding that Respondent, Lansing School District (Employer), did not violate its duty to bargain by refusing to discuss a proposal from Charging Party, Lansing Educational Assistants, MEA/NEA (Union). Charging Party's proposal would require Respondent to pay the union dues and representation fees of bargaining unit members as a fringe benefit. The ALJ found that the Employer's compliance with the proposal would violate both the plain language and the underlying policy of Section 10(1)(b) of the Public Employment Relations Act (PERA), 1965 PA 379 as amended, MCL 423.210(1)(b). Concluding, therefore, that Respondent's refusal to bargain over the proposal did not violate Section 10(1)(e) of PERA, as alleged in the charge, the ALJ recommended that the charge be dismissed.

The ALJ's Decision and Recommended Order was served upon the interested parties in accordance with Section 16 of PERA. On May 25, 2006, Charging Party filed exceptions to the ALJ's Decision and Recommended Order and a brief in support of the exceptions. Respondent was granted an extension until July 7, 2006 to file a response to the exceptions and filed its response on July 6, 2006.

In its exceptions, Charging Party contends that the ALJ erred in finding that its proposal would violate Section 10(1)(b) of PERA and in finding that Respondent did not violate Section 10(1)(e) by refusing to bargain over the proposal. Upon review of Charging Party's exceptions, we find them to be without merit.

Factual Summary:

The facts in this case are not materially in dispute and are derived from the parties' stipulation. Since at least 1982, the Union has been the exclusive bargaining representative of a unit of paraprofessional and educational assistants in the Lansing School District and has entered into several collective bargaining agreements with the Employer. Those agreements include provisions requiring the Employer to deduct amounts from the paychecks of bargaining unit members for union dues or representation fees assessed by the Union and to forward those amounts to Charging Party. Such dues and fees are paid by bargaining unit members as a condition of continued employment.

During negotiations to replace the collective bargaining agreement that expired August 15, 2004, the Union proposed adding language to the contract that would require the Employer to pay the union dues and representation fees directly to the Union instead of deducting them from employees' paychecks. The Employer refused to bargain over the proposal contending that the proposal would require it to contribute to the administration of a labor union and, thereby, violate Section 10(1)(b) of PERA.

Charging Party filed the charge in this matter contending that, by refusing to bargain over the proposal, the Employer violated its duty to bargain under Section 10(1)(e).

Discussion and Conclusions of Law:

The question of whether the Respondent has breached its duty to bargain under Section 10(1)(e) rests on whether Charging Party's proposal involves a mandatory subject of bargaining. That issue depends on whether, as Respondent contends, the Employer's direct payment of union dues and fees would violate Section 10(1)(b). Charging Party contends that we should find its proposal for employer-paid union membership dues and fees involves a legitimate fringe benefit and, thus, a mandatory subject of bargaining.

Section 10(1)(b) of PERA provides, in relevant part, "It shall be unlawful for a public employer or an officer or agent of a public employer . . . to initiate, create, dominate, contribute to, or interfere with the formation or administration of any labor organization." Since Section 10(1)(b) and other portions of PERA were patterned on the National Labor Relations Act (NLRA), 29 USC 150, et seq., we are often guided by Federal cases interpreting the NLRA. Inasmuch as this is a case of first impression for this Commission, both parties have cited decisions by the National Labor Relations Board (NLRB). As noted by the ALJ, the Respondent has cited numerous cases in which the NLRB found an employer's payment of employees' union dues or fees to be unlawful financial support of the union in violation of Section 8(a)(2).[1] Charging Party argues that, in addition to the employer's payment of union dues and fees owed by employees, those cases included other unlawful activity by the employer that interfered with

[1] Section 8(a)(2) of the National Labor Relations Act (NLRA), 29 USC 158(a)(2), states, "It shall be an unfair labor practice for an employer . . . to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it."

employees' Section 7[2] rights. It is Charging Party's position that in the absence of evidence that the employer has engaged in activities designed to dominate the union or interfere with employees' freedom of choice, the NLRB does not, and MERC should not, find that an employer's direct payment of union dues and fees is unlawful.

Charging Party relies principally on two cases in which the NLRB found no violation in the employer's payment of union dues or fees on behalf of employees, *Eastern Missouri Contractors Ass'n*, 180 NLRB 509 (1969) and *Greyhound Lines, Inc*, 275 NLRB 1167 (1985). In *Eastern Missouri Contractors Ass'n*, the NLRB adopted the trial examiner's decision finding no violation when small self-employed contractors, who were members of a multi-employer bargaining unit, paid union membership fees and dues for themselves and, in one instance, for two employees, to avoid having their job sites picketed by other unions. One of the employers paid a total of $24 to cover three months' union dues for two of his employees and made no other payments on their behalf. In that case, the trial examiner was guided by *Loney Davenpor*t, 173 NLRB 232 (1968), where the NLRB found that the employer's payment of a union initiation fee and first month's dues for himself and his advance of the money for those amounts for two employees was lawful.[3] In *Eastern Missouri Contractors Ass'n*, the NLRB stressed that in both *Loney Davenpor*t and the case before it, the employers' payment was insubstantial, and there was no evidence of other union assistance by the employers.

The other case on which Charging Party relies to support its contention that the Employer's payment of union dues and fees is lawful is *Greyhound Lines, Inc*, 275 NLRB 1167 (1985). There, the NLRB found no violation when the employer paid the union dues and fees of employees who had resigned from the union to cross the picket line during a strike. As a result of statements made by their supervisors, the employees who crossed the picket line were under the mistaken impression that they would not have to rejoin the union when the strike ended. However, when the union and the employer entered into a new collective bargaining agreement, the contract contained a union security clause requiring the employees to rejoin the union and to pay union dues and initiation fees. When those employees learned that they were expected to pay an initiation fee to rejoin the union, they claimed that they had been misled by their supervisors and demanded that the employer pay the fee. The employer agreed to pay the initiation fee for the employees who had crossed the picket line because it believed its managers might have made statements that unintentionally led those employees to believe that they would not have to rejoin the union. Noting that the employer's promise to pay the fees was not made as an inducement or as a reward for crossing the picket line, the NLRB reasoned that the payment was to compensate the employees for an economic loss caused by information from the employer. The NLRB found that the payment, in these circumstances, was not likely to

[2] Section 7 of the NLRA, 29 USC 157, provides "Employees 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 such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3)."

[3] There, the employer, a small self-employed contractor, and his employees voluntarily and independently chose to join the union to avoid further picketing by other unions, shortly after being required to leave a work site due to picketing by another union. Davenport advanced the money for his employees' union dues and fees at their request and there was no evidence that he participated in the union or otherwise influenced it in any manner.

encourage or discourage employees from participating in strikes or refraining from doing so in the future and, therefore, there was no indication that the payments were made to restrain or coerce employees in the exercise of their Section 7 rights.

Each of the three aforementioned cases can be distinguished from the one before us because, as the NLRB noted in *Eastern Missouri Contractors Ass'n*, at 514, other than the one time payment of union dues or fees, "there was no other evidence of union assistance and the amount involved was insubstantial." (Emphasis added.) Each of those cases involved an employer's one-time payment of union dues or fees for a small group of employees. In the matter before us, Charging Party is proposing that the Employer pay the union dues and fees for all bargaining unit employees on a regular and continuing basis. Such payments are not "insubstantial." We also agree with the ALJ that while the cases cited by Respondent are factually distinguishable from the instant case, they indicate that the NLRB considers an employer's direct payment of union dues and fees on behalf of employees to be unlawful financial support of the labor organization under Section 8(a)(2) of the NLRA.

Moreover, unlike the cases cited by either party where the employers voluntarily paid union dues and fees, Charging Party's proposal would contractually transfer the legal obligation to pay union dues and fees from the bargaining unit members to the Employer. Under the proposal in question, the employees would no longer have a legal obligation to pay union dues or representation fees. The Employer, not the bargaining unit members, will be contributing the regular financial support of the Union.

Although the language of Charging Party's proposal clearly indicates that the Employer's payment of union dues and fees gives the Employer no voice in the Union's affairs, we must question whether that can be true in practice. Now, while the employees are responsible for the payment of union dues and fees, any decision to increase or decrease membership dues is an internal union matter. Now, the Employer has no legitimate reason to bargain over the amount of the dues or fees assessed by the Union. However, under the proposal at issue, if the Union determines that it needs to raise the dues, the Employer would undoubtedly expect to bargain over the amount. On the other hand, under the Union's proposal, the Employer could, at some point, desire to decrease its financial obligations and request bargaining over the amount of the dues that it is expected to pay. Clearly, giving the Employer an incentive to bargain over the amount of dues or fees received by the Union presents the opportunity for the Employer to "dominate . . . or interfere with the . . . administration of" the Union in violation of Section 10(1)(b). Since the Union's proposal makes its own revenue a part of the Employer's budget, it risks giving the Employer considerable influence over the Union's finances. As the ALJ so accurately opined, "[the Union's proposal] effectively puts the Union's lifeblood – its money – within the Employer's control. . . . [and] carries a real risk of the evil that Section 10(1)(b) is intended to prevent – the subversion of the Union's independence." For the reasons stated above and those stated by the ALJ, we find the Union's proposal to require the Employer to pay the union dues and fees assessed against members of the bargaining unit to be a violation of the language of and policy behind Section 10(1)(b).

The Commission, therefore, concludes that Charging Party's proposal is not a mandatory subject of bargaining and the Employer did not violate Section 10(1)(e) of PERA by refusing to bargain with Charging Party over the issue of direct payments of union dues and fees by the

Employer. Accordingly, we affirm the ALJ's decision and adopt her recommended order dismissing the charge in this matter.

ORDER

IT IS HEREBY ORDERED that the Order recommended by the Administrative Law Judge shall become the Order of the Commission.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____
Christine A. Derdarian, Commission Chair

_____
Nino E. Green, Commission Member

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Eugene Lumberg, Commission Member

Dated: _____

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Clark Hill PLC, by John L. Gierak, Esq., and Reginald M. Turner, Esq., for Respondent

White, Schneider, Young and Chiodini, PC, by Kathleen Corkin Boyle, Esq., for Charging Party

DECISION AND RECOMMENDED ORDER
OF
ADMINISTRATIVE LAW JUDGE

Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210, this case was assigned for hearing to Administrative Law Judge Julia C. Stern for the Michigan Employment Relations Commission. On August 8, 2005, the parties submitted a stipulation of facts in lieu of a hearing. Based upon the entire record, including the stipulated facts and briefs filed by the parties on September 30, 2005, I make the following conclusions of law and recommended order.

The Unfair Labor Practice Charge:

On February 2, 2005, the Lansing Educational Assistants, MEA/NEA filed this charge against the Lansing School District (the Employer) alleging that it refused to bargain over a mandatory subject of bargaining in violation of Section 10(1)(e) of PERA. Charging Party represents paraprofessional employees of the Employer. During the parties' negotiations for a new collective bargaining agreement in 2004, Charging Party proposed that the Employer agree in the contract to pay the union dues and representation/agency fees unit members must pay Charging Party as a condition of their continued employment.[4] The Employer refused to discuss

[4] Charging Party does not specifically assert that its proposal was a mandatory, as opposed to a permissive, subject of bargaining. However, an employer has no obligation to bargain over a permissive subject, although it may do so voluntarily. *Pontiac Police Officers Ass'n v Pontiac*, 397 Mich 674, 679-681 (1976); *Metropolitan Council No 23 v City of Center Line*, 414 Mich 643,652 (1982).

the proposal, asserting that it would cause the Employer to violate Sections 10(1)(a)(b) and (c) of PERA.

Stipulated Facts:

1. Charging Party, the Lansing Educational Assistants, MEA/NEA (LEA), is the sole and exclusive bargaining representative for a bargaining unit in the Lansing School District composed of paraprofessional and educational assistants. Charging Party has served as the collective bargaining representative since at least 1982.

2. Charging Party and the Employer have been parties to several collective bargaining agreements, the most recent of which expired on August 15, 2004. Those collective bargaining agreements included provisions that provided for the Employer to deduct from the paychecks of Charging Party's members dues assessed to those members by the LEA, the Michigan Education Association, and the National Education Association. Charging Party and the Employer were also parties to collective bargaining agreements that required all bargaining unit members as a condition of employment to either be a member of the LEA in good standing or to pay a representation fee to the LEA. The Employer further agreed to withhold from the paychecks of bargaining unit members amounts owed as a part of the representation benefit fee.

3. In the current course of negotiations and continuing to the present time, the negotiations team for Charging Party has proposed to substitute for the articles of the expired collective bargaining agreement concerning LEA security and LEA dues [the following] proposal for employer-paid dues:

Article 11
Professional Dues, Representation Benefit Fees & Payroll Deductions

11.1 Each year, the Association will provide the Employer with a list of active members of the Association who have signed continuing membership forms with the Association and the amount of dues owed by those members to the Education Association, MEA/NEA and its affiliates.

11.2 Within fifteen (15) calendar days of receipt of the information described above, the Employer will pay to the Association the total dues obligation for each member of the Association. The payment of these dues shall be for and on behalf of the individual members of the Association and said payment shall not entitle the Employer to any rights, privileges, or responsibilities of membership with the Association.

11.3 The Board shall provide to the Association monthly a list of any additions or deletions from the bargaining unit (including any changes in the full time or part-time status of a bargaining unit member that would affect the amount of dues obligation for the member).

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

11.5 After the Association has completed the requirements of the Policy and Procedures for determining the appropriate representation benefit fee, usually in April, the Association shall provide the Employer with a list of fee payers and the amount of the representation benefit fee for each fee payer.

11.6 Within thirty (30) calendar days of receipt of the information from the Association, the Board shall pay to the Association the amount of the representation benefit fee owed for those fee payers. The payment of these fees shall be for and on behalf of the individual fee payers and said payment will not entitle the Employer to any rights, privileges or responsibilities with the Association.

11.7 In July of each year, based upon the number of additions and deletions of members of the bargaining unit (including any changes in the full time or part-time status of a bargaining unit member that would affect the amount of dues obligation for the member) during the course of the school year the Association and the Employer shall determine any amount overpaid or underpaid by the Employer for dues and representation benefit fees and the Association shall reimburse the Employer for any overpayments or the Employer shall pay the Association for any underpayments, as the case may be.

11.8 Should any portion of this Article be found to be unlawful by a court or administrative agency of competent jurisdiction, then the terms of Article 11 in effect during the school year shall immediately be substituted for this Article and will immediately be in full force and effect.

11.9 Payroll deductions: Upon appropriate written authorization from the bargaining unit member, the Employer shall deduct from the wages of any such members and make appropriate remittance for MEA FS's [sic] MEA-sponsored programs (tax-deferred annuities, auto insurance, homeowner's insurance, etc.) MESSA program not fully Employer-paid as provided elsewhere in this Agreement, credit union, savings bonds, charitable donations, MEA-PAC/NEA

Fund for Children and Public Education (formally known as "NEA-PAC") contributions or any other plans or programs jointly approved by the Association and Employer.

4. There has been no question concerning representation of the members of the bargaining unit represented by Charging Party for at least 22 years and no such question exists presently. The reasons for the employer-paid dues proposal being proposed by Charging Party include that under current IRS law, it is believed that said proposal stands to save the Employer federal FICA taxes and state retirement contributions on the amount of the dues, while saving members of the bargaining unit federal and state income taxes and federal FICA taxes.

5. With respect to paragraph 4, more specifically it is believed that the savings referenced therein will result because the payment of dues by the Employer for and on behalf of Charging Party's members, and the representation benefit fees for and on behalf of the remaining members of the bargaining unit represented by Charging Party, will constitute "working condition fringe benefits" for professional dues and fees, within the meaning of Section 132(a)(3) and 162 (a) of the Internal Revenue Code.

6. Pursuant to the proposal, the amount of the payment made by the Employer is solely determined by the number of members of the bargaining unit and the amount of the dues and representation benefit fees owed by those members. The payment made by the Employer does not entitle the Employer to any rights, privileges, or responsibilities of membership with the Charging Party or any of its affiliates. Under this proposal, the Employer will have no role in the operation of Charging Party, beyond making the payments described above.

7. Pursuant to the proposal, the representation benefit fee for a non-member is not paid by the Employer until the Association has completed the requirements of the Association's "Policy regarding Objections to Political-Ideological Expenditures" and the amount of the representation benefit is determined in accordance with said policy. Essentially the same policy was previously approved as meeting all constitutional requirements by the United States District Court in *Lehnert v Ferris Faculty Ass'n-MEA/NEA*, 707 F Supp 1482 (WD Mich, 1988).

8. Pursuant to the proposal, shortly after the end of each school year Charging Party and the Employer will review the number of additions and deletions to the bargaining unit during the course of the school year and determine any amount overpaid or underpaid by the Employer for dues and representation benefit fees. Any overpayments will be promptly refunded by Charging Party and any underpayments will result in an additional payment by the Employer.

9. The Employer has refused and continues to refuse to bargain over said proposal because it believes the employer-paid dues proposal is unlawful under the Public Employment Relations Act.

Discussion and Conclusions of Law:

Charging Party asserts that employer-paid union membership fees and services are a legitimate fringe benefit, analogous to an employer's payment of its employees' membership

fees in professional organizations such as the State Bar of Michigan. Assuming that Charging Party's interpretation of the relevant statutes is correct, this benefit would be tax-free to the employees, while the cost to the Employer would be partially offset by the fact that the Employer would not be required to pay FICA taxes or contributions to the Michigan Public School Employees Retirement System on the amount of the dues and fees.

The Employer refused to bargain over the proposal, arguing that the proposal requires it to make direct payments to Charging Party in violation of the prohibition in Section 10(1)(b) of PERA against employer contributions to the administration of a labor organization. This section states:

> It shall be unlawful for a public employer or an officer or agent of a public employer . . .
>
> (b) To initiate, create, dominate, contribute to or interfere with the formation or administration of any labor organization: Provided, that a public employer shall not be prohibited from permitting employees to confer with it during working hours without loss of time or pay. [Emphasis added]

The Employer points out that the supposed benefit to all parties from Charging Party's proposal is predicated on the fact that that the Employer is to pay Charging Party with the Employer's own funds. However, according to the Employer, it is because the funds for these payments are to come directly from the Employer that the arrangement violates Section 10(1)(b). The Employer maintains that this section prohibits an employer from contributing financially to the administration of a union in any way. According to the Employer, the single, explicit, exception contained in the proviso to Section 10(1)(b) – permitting an employer to pay employee representatives for time spent conferring with it during working hours – underscores how broad this prohibition was intended to be. It also asserts that while Section 10(2) and the proviso to Section 10(1)(c) of PERA permit an employer and union to require employees to pay union dues or fees as a condition of employment, they do not make it lawful for an employer to pay these dues and fees.[5]

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[5] Section 10(1). It shall be unlawful for a public employer or an officer or agent of a public employer . . .

> (c) To discriminate in regard to hire, terms or other conditions of employment in order to encourage or discourage membership in a labor organization: Provided further, That nothing in this act or in any law of this state shall preclude a public employer from making an agreement with an exclusive bargaining representative as defined in Section 11 to require as a condition of employment that all employees in the bargaining unit pay to the exclusive bargaining representative a service fee equivalent to the amount of dues uniformly required of members of the exclusive bargaining representative.
>
> Section 10(2) It is the purpose of this amendatory act 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 to the amount of dues uniformly required of members of the exclusive bargaining representative.

Charging Party argues that the Employer reads the term "contribute to" in Section 10(1)(b) too broadly. Charging Party maintains that an employer does not "contribute to" the administration of a union if it pays the dues and fees unit employees owe the union on their behalf. It also points out that the Commission has long held that an employer may lawfully provide an incumbent union with certain benefits, i.e., checkoff of union dues and fees, the use of bulletin boards and the employer's internal mail system to communicate with members, and the use of rooms on the employer's premises for union meetings, without violating Section 10(1)(b). See *Avondale Sch Dist*, 1968 MERC Lab Op 518,525. Moreover, according to Charging Party, the purpose of Section 10(1)(b) is to prevent an employer from dominating or controlling an incumbent labor organization or supporting a favored one over its rival. In this case, Sections 11.2 and 11.6 of Charging Party's proposal state that the Employer's payment of dues and fees on behalf of individual employees will not entitle the Employer to any rights, privileges or responsibilities within the union. According to Charging Party, this ensures that the Employer's payment of dues and fees will not allow it to exercise control over the union's internal operations.

The Employer's response is that benefits such as checkoff and the use of bulletin boards are de minimis compared to making the Employer the primary source of union dues and fees. It argues that such a shift could change the entire dynamic between the parties. As an example, it argues that the amount of the dues or fees, historically an internal union decision, could become an issue at the bargaining table. The Employer also maintains that an arrangement in which the employer pays the union dues and service fees creates a real risk of domination in certain situations, particularly where employees are represented by a local union not affiliated with a larger labor organization. According to the Employer, the old adage – "He who pays the piper calls the tune" – is rooted in hard experience.

Section 10(1)(b), like other portions of Section 10 of PERA, was patterned on the National Labor Relations Act (NLRA), 29 USC 150 et seq. Section 8(a)(2) of the NLRA makes it unlawful for an employer:

> 2. To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it.

The Employer cites many cases in which the National Labor Relations Board found employers to have violated Section 8(a)(2) by using their own money to pay their employees' union dues or fees.[6] Charging Party contends that these cases have no bearing on this issue since they involve situations where there were two rival unions, where the employer paid money to a union that did not represent the majority of its employees, or where other circumstances indicated that the employer and the union did not have an arm's length relationship. It also points out that none of these cases involve an explicit written agreement for the employer to pay the dues and fees, as proposed here. The Employer concedes that all the cases it cites involve distinctly different factual situations, but it contends that these cases stand for the proposition

[6] See *Mar-Jam Supply Co*, 337 NLRB 337(2001); *Sweater Bee by Banff*, 197 NLRB 805 (1972); *Western Auto Associates Store*, 143 NLRB 703 (1963); *Aacon Contracting Co, Inc*, 127 NLRB 1250 (1960); *ABC Machine and Welding Service*, 122 NLRB 94 (1959); *Dixie Bedding Mfg Co*, 121 NLRB 189 (1958); *Boss Overhaul Cleaners*, 100 NLRB 1210 (1952).

that an employer clearly violates Section 8(a)(2) of the NLRA whenever it pays money directly to a union. The Employer notes the administrative law judge's remark in *Luke Construction Co, Inc,* 211 NLRB 602, 604 (1974):

> It also is quite obvious, the Respondent readily concedes, that Respondent further rendered unlawful assistance and support by advancing and paying to Local 101 the initiation fees and union dues of its Shell job employees before actually deducting the said sums from the employees' paychecks . . .

I agree with the Employer that payments made by it pursuant to Charging Party's proposal would violate Section 10(1)(b) of PERA. While none of the NLRB cases cited by the Employer are factually similar to this case, it is clear that the NLRB considers dues and fees paid by an employer to a union on behalf of its unit members to constitute "financial or other support" under Section 8(a)(2) of the NLRA. I also agree with the Employer that an employer's direct financial contribution to a union in the form of dues and fees is different from providing it with incidental services such as the use of a bulletin board or the deduction of dues from paychecks. Although Charging Party's proposal does not give the Employer any formal voice in the internal affairs of the union, it effectively puts the union's lifeblood – its money – within the Employer's control. I agree that giving the Employer this control carries a real risk of the evil that Section 10(1)(b) is intended to prevent – the subversion of the union's independence. I conclude that payment by the Employer of union dues and fees would violate both the plain language and the underlying policy of Section 10(1)(b) of PERA. For this reason, I conclude that the Employer did not violate Section 10(1)(e) of the Act by refusing to bargain over Charging Party's proposal to make union dues and representation fees an employer-paid fringe benefit.

Because I agree with the Employer that Charging Party's proposal would cause it to violate Section 10(1)(b), I need not address its arguments that the proposal would also violate Section 10(1)(c). Based on the facts as stipulated and in accord with the conclusions of law set forth above, I recommend that the Commission issue the following order.

RECOMMENDED ORDER

The charge is dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____

Julia C. Stern
Administrative Law Judge

Dated: _____