

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

In the Matter of:

MICHIGAN EDUCATION ASSOCIATION,  
Labor Organization-Respondent,

-and-

HERBERT LINDSAY,  
An Individual Charging Party.

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Case No. CU15 D-013  
Docket No. 15-032514-MERC

APPEARANCES:

White, Schneider, Young & Chiodini, P.C., by Jeffrey S. Donahue and Catherine E. Tucker, for Respondent

Herbert Lindsay, appearing on his own behalf

**DECISION AND ORDER**

On August 14, 2015, Administrative Law Judge David M. Peltz issued his Decision and Recommended Order in the above matter finding that Respondent did not violate Section 10 of the Public Employment Relations Act, 1965 PA 379, as amended, and recommending that the Commission dismiss the charges and complaint.

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

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

**ORDER**

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

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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/s/

Edward D. Callaghan, Commission Chair

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/s/

Robert S. LaBrant, Commission Member

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/s/

Natalie P. Yaw, Commission Member

Dated: October 29, 2015

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

In the Matter of:

MICHIGAN EDUCATION ASSOCIATION,  
Respondent-Public Employer,

-and-

Case No. CU15 D-013  
Docket No. 15-032514-MERC

HERBERT LINDSAY,  
An Individual Charging Party.

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**APPEARANCES:**

White, Schneider, Young & Chiodini, P.C., by Jeffrey S. Donahue and Catherine E. Tucker, for the Labor Organization

Herbert Lindsay, appearing on his own behalf

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

This case arises from an unfair labor practice charge filed on April 23, 2015, by Herbert Lindsay against the Michigan Education Association (MEA). Pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 and 423.216, the charge 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).

**The Unfair Labor Practice Charge and Procedural History:**

The charge alleges that Respondent violated PERA by refusing to accept Lindsay's resignation from membership in the labor organization in September of 2013 and by denying his request to end dues payments. In addition, the charge asserts that the Union acted unlawfully in March of 2015 when it attempted to collect unpaid dues using the services of a bill collector. On May 14, 2015, I held a telephone conference with the parties to discuss the allegations set forth by Charging Party and the impact of various cases pending before the Commission that involve the same or similar issues as those raised by Lindsay. During this discussion, counsel for Respondent indicated that the Union would be filing a motion for summary disposition asserting that the charge was not timely filed under Section 16(a) of PERA. A briefing schedule was established for the filing of the motion by the Union and a response by Lindsay. The parties agreed that if the charge was not

summarily dismissed based upon the statute of limitations, the case would be held in abeyance pending issuance by the Commission of decisions in the related cases.

Facts:

The following facts are derived from the unfair labor practice charge and Charging Party's response to the Union's motion for summary disposition, as well as the assertions set forth by Respondent in its motion which were not specifically disputed by Charging Party, including all attachments to the pleadings.

I. Background

Herbert Lindsay is employed as a teacher by Fremont Public Schools and is a member of a bargaining unit represented by the Fremont Education Association (FEA), a local affiliate of the MEA. He began working for the school district in August of 1997. On August 28, 1997, Lindsay signed a Continuing Membership Application requesting membership in the MEA, the FEA and the National Education Association (NEA). On that application, Lindsay checked a box authorizing the school district to "deduct Local, MEA and NEA dues, assessments and contributions as may be determined from time to time" unless Lindsay revoked the authorization "in writing between August 1 and August 31 of any year."

II. 2012 PA 53 and 2012 PA 349

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:

(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.

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- (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. Litigation Concerning the Applicability of 2012 PA 53 and 2012 PA 349

Passage of the “right to work” legislation resulted in the filing of numerous unfair labor practice charges with the Commission, including several cases involving the attempted enforcement by labor organizations of resignation window periods. In *Saginaw Ed Assn and MEA*, Case Nos. CU13 I-054 – CU13 I-061; Docket Nos. 13-013125-MERC – 13-013134-MERC, issued September 2, 2014, ALJ Julia Stern issued a Decision and Recommended Order in which she concluded that the MEA had 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 held that members of the labor organization had the right to resign at any time under PERA and that the continuing membership applications signed by the charging parties did not constitute a waiver of that right.

On October 3, 2014, I issued a Decision and Recommended Order in *Teamsters Local 214*, Case No. CU13 I-037; Docket No. 13-011918, recommending dismissal of a complaint filed by an individual charging party whose attempt to resign union membership was denied by the Teamsters on the ground that the request was made outside of the designated resignation window period. I concluded that the Commission lacked jurisdiction over the matter because there had been no showing that the union’s conduct had any impact on the charging party’s terms and conditions of employment. Exceptions are currently pending in both of the above referenced cases.

### IV. Lindsay’s Attempt to Resign and Aftermath

In a series of emails exchanged between Charging Party and FEA president Dawn Finch in early September of 2013, Charging Party requested information concerning resignation from the

Union and the possibility of paying an agency fee to Respondent in lieu of full Union dues. On September 11, 2013, Lindsay attended a Union meeting during which there was discussion about the August window or “opt out” period for resigning membership in the MEA and its affiliated locals. Following the meeting, Lindsay continued to communicate with Finch and other Union officials regarding his interest in resigning from the Union. During a telephone conversation on September 13, 2013, Finch informed Lindsay that “the time to resign the union is past” and she referenced “contractual obligations” which would require Lindsay to remain a Union member. Finch also told Lindsay that he must pay fees and dues “or legal action will result.” In an email message to Finch dated September 17, 2013, Lindsay complained about the Union’s intent to enforce the August window period.

During this same period, Charging Party came across a letter purportedly written by MEA president Steven Cook which had been posted on an independent website. In the letter, a copy of which Lindsay attached to his response to the Union’s motion for summary disposition, Cook discusses the passage of the “right-to-work” law and the Union’s response to that legislation. The Cook letter provides, in pertinent part:

The membership application signed by every member indicates that if they wish to resign their membership, they must do so in August – and only August. We are sticking to that. Members who indicate they wish to resign membership in March, or whenever, will be told they can only do so in August. We will use any legal means at our disposal to collect the dues owed under signed membership forms from any members who withhold dues prior to terminating their membership in August for the following fiscal year. Same goes for any current fee payers who choose not to pay their service fee.

On or about September 25, 2013, Charging Party sent a money order to Respondent in the amount of \$513.50. Accompanying the check was a letter in which Lindsay acknowledged that the amount enclosed was half of the \$1,027 in dues and fees he believed was outstanding and that he was making the payment “with protest.” In the letter, Lindsay complained that he had no recollection that the membership agreement he signed in 1997 limited resignations to the period between August 1 and August 31, and he asserted that he was never “provided opportunity to make a choice to leave the union.” Lindsay stated that if there were legal challenges to the MEA’s position and it was determined that enforcement of the August window period was illegal, he expected Respondent to refund the \$513.50. At the conclusion of the letter, Lindsay indicated that he would be exercising his right to leave the Union when he had the next opportunity the following August.

On October 2, 2013, Lindsay sent the Union a letter resigning his membership in the labor organization, despite the fact that he “knew it would likely be a futile attempt.” The Union responded by letter dated October 31, 2013. In that response, which was signed by MEA Executive Director Gretchen Dziadosz, Respondent indicated that it could not accept Lindsay’s resignation because the request had not been submitted to the Union between August 1 and August 31 of the year preceding the designated membership year, as specified in the MEA’s bylaws and Continuing Membership Application. Attached to the letter was a copy of the membership application which

Charging Party signed in 1997, a document which Dziadosz described in her letter as a “contract between [Lindsay] and the Association.”

In a lengthy letter to Doug Pratt, Respondent’s Director of Member Benefits dated January 27, 2014, Charging Party recounted his efforts to investigate his rights and obligations with respect to continuing membership in the labor organization and his attempted resignation from the MEA. In the letter, Lindsay noted that he “chose to not take MEA to court” and that he “passed on that opportunity” because he “did not want added stressors in [his] life.” At the conclusion of the letter, Charging Party requested that the Union accept his untimely resignation “due to extenuating circumstances.” The Union responded on April 8, 2014, with what appears to be a form letter identical in substance to the letter sent by Dziadosz to Charging Party the prior October. In the letter, Dziadosz reiterated the Union’s position that Lindsay had failed to timely resign from the MEA and that, therefore, his membership “automatically renewed for the 2013-2014 school year.”

Charging Party responded to Dziadosz by letter dated April 14, 2014, in which he renewed his request that the MEA immediately accept his resignation “due to extenuating circumstances.” Approximately one week later Dziadosz notified Lindsay in writing that the Union would not be honoring his request:

Fairness, respect, and trust are very important issues to us. Because we must maintain trust, fairness and respect for our many members who choose to remain MEA members, we are bound by the MEA Constitution, Bylaws and Administrative Policies that they have enacted through the democratic process. Quite simply, I do not have the ability to overturn the actions that the membership has put in place. And quite frankly, I would never want to.

Lindsay replied to Dziadosz on April 28, 2014, complaining that the Union had failed to provide him with the necessary information concerning the August window period and that recent legislative changes had rendered the Continuing Membership Application invalid. Lindsay concluded the letter by reiterating his belief that he is entitled to a refund of the partial payment of dues if the Union’s position is ultimately declared unlawful by MERC.

The resignation window period for the 2014-2015 membership year began August 1, 2014. On that date, Charging Party alerted the Union in writing of his intent to immediately resign from the MEA and “all of its affiliates.” On August 13, 2014, Respondent notified Lindsay that his request to resign had been accepted and that the resignation would be effective as of September 1, 2014. The letter indicated that Lindsay’s account remained in arrears for membership dues owed to the Union up until the effective date of his resignation and warned that such funds “must be remitted to the MEA by August 31, 2014, or the total amount owed will be turned over for collections for services rendered.” The Union sent another letter to Lindsay regarding the amount in arrears on September 24, 2014, along with an invoice in the amount of \$513.50.

On October 21, 2014, Charging Party received an unsigned note in his school mailbox notifying him that his account was 90-plus days past due. The note included instructions for making payment and a phone number. Lindsay called the number and spoke to Teresa Boyer, an MEA field

member assistant. Boyer promised Lindsay that the Union would send no more form letters and acknowledged that he was “tied up in the MERC ruling” which could take “awhile to resolve.”

On or about December 12, 2014, Charging Party received a letter from Respondent indicating that his account was more than 60 days past due and requesting payment in the amount of \$513.50. In a letter dated February 4, 2015, Respondent once again reminded Charging Party that his account was in arrears and warned that if payment was not made by February 16, 2015, the account would be turned over to a collections agency and that such action would affect Lindsay’s credit rating. On February 8, 2014, Lindsay sent a response to the Union asserting that the prior letter from the MEA contained “inaccurate statements” and complaining that it would be “premature” for Respondent to submit his account to collections.

There was a similar exchange of correspondence between Charging Party and the Union in February of 2015. In several of those letters and e-mail messages, Lindsay inquired as to whether his account had in fact been turned over to a collections agency. On February 17, 2015, a Union representative responded to Lindsay by stating, “Unless you have evidence that you paid the amount in question, there is nothing to discuss as we do not discuss policy with nonmembers. If you have evidence that you have paid the amount in question, you can forward that evidence and we will correct the record.”

On or about March 2, 2015, Charging Party received a notice from Accounts Receivable Solutions, Inc. (ARS), a private collections agency, seeking payment of a \$513.50 debt to the MEA. That same day, Lindsay sent a letter to ARS disputing the validity of the debt. He sent another such letter to ARS on March 25, 2015. Lindsay filed the instant charge on April 24, 2015.

#### Discussion and Conclusions of Law:

Respondent asserts that the charge must be dismissed because it was not timely filed under Section 16(a) of PERA. According to Respondent, the limitations period began to run in September of 2013 when the Union notified Charging Party that it had refused his request to resign from membership in the MEA and its affiliated locals. Respondent asserts that Lindsay knew or should have known at that time that the Union intended to enforce its August resignation window period. Given that the instant charge was not filed until April 20, 2015, approximately eighteen months later, the Union argues that any allegation concerning the MEA’s maintenance or enforcement of its August window period is barred by the applicable period of limitations. Respondent further contends that Charging Party cannot revive his untimely claims based upon events occurring after September, including the submission of Lindsay’s account to collections, as the Commission has consistently and steadfastly rejected a continuing violations theory.

Charging Party argues that his charge should be considered timely because he made partial payment of his membership dues on September 25, 2013, in protest of the MEA’s policy regarding resignations. Lindsay asserts that since the Union did not explicitly object to the partial payment, he assumed his protest had been understood and accepted. Lindsay contends that had the MEA responded and refuted his letter of protest, he would have filed an unfair labor practice charge at that time.



Pursuant to Section 16(a) of PERA, no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Commission. The Commission has consistently held that the statute of limitations is jurisdictional and cannot be waived. *Walkerville Rural Comm Sch*, 1994 MERC Lab Op 582, 583. The limitations period commences when the charging party knows or should have known of the acts constituting the unfair labor practice and has good reason to believe the acts were improper or done in an improper manner. *Huntington Woods v Wines*, 122 Mich App 650, 652 (1983). The statute of limitations is not tolled by the attempts of an employee or a union to seek a remedy elsewhere, including the filing of a grievance, or while another proceeding involving the dispute is pending. See e.g. *Univ Of Michigan*, 23 MPER 6 (2010); *Wayne County*, 1998 MERC Lab Op 560.

In the instant case, there can be no dispute that Charging Party knew or should have known by September of 2013 of the MEA's August resignation window period and the Union's intention to enforce that policy despite the passage of the "right-to-work" legislation. Early that month, Lindsay attended a Union meeting at which the August resignation window period was discussed. During a telephone call on September 13, 2013, FEA president Dawn Finch informed Lindsay that "the time to resign the union [had] past" and that "contractual obligations" would require him to remain a member of the labor organization. In addition, Finch warned Lindsay that "legal action" would result if he failed to pay dues and fees. Around that same time, Lindsay came across a letter which he understood to have been written by Steven Cook in which the MEA president indicated that the Union was "sticking to" the August resignation window period, despite the recent passage of the "right-to-work" law, and that Respondent would "use any legal means at [its] disposal to collect the dues owed under signed membership forms from any members who withhold dues prior to terminating their membership in August for the following fiscal year."

Although Charging Party subsequently remitted partial payment of his membership dues and fees to Respondent under protest, the Union never waived in its position that Lindsay's attempted resignation was untimely and, therefore, that he remained a member of the labor organization through August of 2014. Respondent communicated that fact to Charging Party numerous times, including in letters dated October 2, 2013, April 8, 2014, and April 21, 2014. The Union also repeatedly made clear to Charging Party that his account was in arrears, including in written letters and/or emails to Lindsay dated August 13, 2014, and September 24, 2014. All of the above referenced communications were made more than six months prior to the filing of the charge. Other than one ambiguous reference by an MEA field specialist to Charging Party being "tied up in the MERC ruling," the Union was consistent and definitive in its many communications with Lindsay. In fact, Lindsay himself acknowledged in writing long before the filing of the charge that he was aware he had a possible claim against the Union but that he had intentionally decided to forgo pursuing legal action. In his letter to Respondent dated January 27, 2014, Lindsay wrote that he "chose not to take MEA to court" and that he "passed on that opportunity" because he "did not want added stressors in [his] life."

In an effort to avoid dismissal of the charge on timeliness grounds, Charging Party presents an exhaustive recitation of events which occurred during the months immediately preceding the filing of the charge on April 23, 2015. None of these facts, however, are sufficient to establish that the charge should be considered timely under Section 16(a) of the Act. As noted, Charging Party knew or should have known of the Union's position with respect to his membership and financial

obligations in September of 2013. Charging Party's reliance on events occurring more than six-months later must be rejected, as the Commission has steadfastly rejected attempts by charging parties to revive otherwise untimely claims based upon a continuing violation theory. See e.g. *City of Adrian*, 1970 MERC Lab Op 579, 581, adopting the U.S. Supreme Court ruling in *Local Lodge 1424, Machinists v NLRB (Bryan Mfg Co)*, 362 US 411 (1960). See also *Traverse Area Dist Lib*, 25 MPER 82 (2012); *City of Detroit*, 25 MPER 58 (2012); *County of Lapeer*, 19 MPER 45 (2006); *Detroit Bd of Ed*, 16 MPER 29 (2003); *Zeeland Pub Sch*, 1999 MERC Lab Op 505 (no exceptions); *City of Flint*, 1996 MERC Lab Op 1, 9-11.

For the reasons set forth above, I find that the statute of limitations period began to run in September of 2013, approximately 18 months before Lindsay filed the instant charge. Accordingly, I recommend that the Commission issue the following order:

RECOMMENDED ORDER

The unfair labor practice charge filed by Herbert Lindsay in Case No. CU15 D-013; Docket No. 15-032514-MERC, is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

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David M. Peltz  
Administrative Law Judge  
Michigan Administrative Hearing System

Dated: August 14, 2015