

STATE OF MICHIGAN
IN THE SIXTH JUDICIAL CIRCUIT COURT
COUNTY OF OAKLAND

SUSAN R. BANK,
an individual,

Plaintiff,

-v-

Case No. 14 -
Hon.

- CL

MICHIGAN EDUCATION ASSOCIATION - NEA, and
NOVI EDUCATION ASSOCIATION, MEA - NEA,
incorporated labor unions,

Defendants.

Patrick J. Wright (P54052)
Derk A. Wilcox (P66177)
MACKINAC CENTER LEGAL FOUNDATION
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There is no other pending or resolved civil action
arising out of the same transaction or occurrence
alleged in the Complaint.

COMPLAINT

INTRODUCTION

In 2012 Michigan passed the Freedom To Work Act, commonly known as Right To Work. The Act prohibited both public and private-sector unions from requiring payment from employees in the bargaining unit which the union represents. Incorporated in MCL 423.210, the Act states that public-sector employees, such as Plaintiff, cannot be required to: “(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.”

The Defendants, labor unions who represent the Plaintiff’s mandatory collective bargaining unit, claim that Plaintiff owes them union dues for the school year starting September 1, 2013. The Plaintiff maintains that she has no obligation to pay dues or fees to defendant unions other than the obligation that had been part of a union security provision in her collective bargaining agreements. However, her unit’s last collective bargaining agreement expired on June 30, 2013. After June 30th, her employment was subject to Right to Work, and no collective bargaining agreement could compel her to pay union dues or fees.

The Defendants have maintained that a Continuing Membership Application which Plaintiff signed in August 2002 created a basis for her dues obligation, outside of the collective bargaining agreement. The Continuing Membership Application, however, does not create an obligation to pay dues and, even if it did, that obligation ended on June 30, 2013.

In the alternative, even if Plaintiff still had an obligation to pay dues based on the Continuing Membership Application, the defendant unions had a fiduciary duty to timely inform Plaintiff of the effect the new right to Work law had on her membership and that the fact that she could now resign from the defendant unions and no longer be required to pay agency fees which had been almost equal to the full amount of dues. Prior to Right to Work, she could have been required to pay these fees.

The Defendants failed to timely inform Plaintiff of Defendants’ policy of only allowing membership resignation during the month of August. Defendants, as fiduciaries who have a duty to Plaintiff, had an affirmative duty to inform Plaintiff of this “August Window.” Instead,

despite repeated communications sent to Plaintiff regarding financial obligations to the union, Defendants never informed her of her new rights under Right to Work. Rather, because Defendants wanted to continue to collect as much in dues and fees as they could, defendant unions shifted the burden onto Plaintiff, and other union members, to seek out and interpret the unions' bylaws to understand their rights. This violates the duty of fair representation. Like other fiduciary duties, a union's duty of fair representation requires that it provide complete, relevant, and timely information to those it represents so that members can make fully informed decisions about their membership. The duty does not allow the union to place its financial desires above the requirement to inform members of their rights.

Given the recentness of Michigan's new Right to Work status, the courts have not yet declared what a union's fiduciary duty is in this regard. However, every form of fiduciary duty requires that the fiduciary owes its principal a duty of full disclosure, even if this might result in a financial disadvantage to the fiduciary.

PARTIES AND JURISDICTION

1. Plaintiff, SUSAN R. BANK, is an individual who is employed by the Novi Middle School as a Special Education Resource/Caseload Teacher.
2. Plaintiff, SUSAN R. BANK, is an employee in a bargaining unit who is represented by the defendant unions, NOVI EDUCATION ASSOCIATION - NEA and the MICHIGAN EDUCATION ASSOCIATION - NEA (MEA).
3. Plaintiff, SUSAN R. BANK resides in the City of Brighton, Livingston County, Michigan.
4. Defendant NOVI EDUCATION ASSOCIATION, MEA - NEA, upon information and

- belief, is an incorporated labor union.
5. Defendant NOVI EDUCATION ASSOCIATION, MEA - NEA, upon information and belief, is located in Lathrup Village, Oakland County, Michigan.
 6. Defendant MEA, upon information and belief, is incorporated as a 501(c)(5) labor organization.
 7. Defendant MEA, upon information and belief, is located in East Lansing, Ingham County, Michigan.
 8. On or about August 19, 2002, Plaintiff signed a “Continuing Membership Application” contract with the Defendants, a copy of which is attached as Exhibit A, in Oakland County.
 9. The contractual relationship at issue here was entered into and took place in Oakland County.
 10. This complaint requests injunctive and declaratory relief as authorized by MCR 2.605; and equitable relief over which this Court has jurisdiction.
 11. This matter involves the defendant unions’ judicially-created duty of fair representation, over which this court has jurisdiction. See, e.g. *Demings v Ecorse*, 423 Mich 49 (1985).

GENERAL ALLEGATIONS

12. Plaintiff hereby incorporates the preceding paragraphs as though restated herein.
13. Michigan’s Freedom to Work Act, or Right to Work, was passed in December 2012 and took effect on March 28, 2013.
14. Right to Work applies to any collective bargaining agreement entered into or renewed after its effective date.

15. The collective bargaining agreement which applied to Plaintiff's bargaining unit expired on June 30, 2013.
16. After June 30, 2013, Plaintiff could no longer be required to pay agency fees.
17. Sometime in September 2013, Plaintiff became aware that Defendants were viewing Continuing Membership Applications as a legal basis, independent of the collective bargaining agreement, which required her to pay dues or agency fees. She was informed of this when she spoke with her regional MEA Uniserv director about resigning. She was told that it was too late for her to resign, and that resignations were only accepted in August.
18. Defendant MEA has publicly stated that it will not honor resignations made outside of the month of August.
19. Plaintiff has not paid her membership dues and was told that she is "not a member in good standing." See a copy of a November 6, 2013 email from Heather Burnside attached as Exhibit B.
20. Upon information and belief, being an MEA member who is not in "good standing" is not the same as the MEA accepting her resignation and thereby relieving her of any requirement to pay dues.
21. The Defendants have indicated that they will begin debt collection actions against her. See a copy of an October 21, 2013 email from David Kniaz, attached as Exhibit C.
22. Defendant MEA has publicly acknowledged that it will pursue legal collection actions against members who unsuccessfully attempted to resign after the month of August.
23. Any debt collection actions will harm Plaintiff's credit rating.

24. Because of Defendants' failure to inform her of her rights, Plaintiff has not been allowed to resign and is being threatened with a legal action to collect membership dues and/or agency fees from her that can no longer be required by law.

DECLARATORY ACTION

25. Plaintiff hereby incorporates the preceding paragraphs as though restated herein.
26. As part of the Continuing Membership Application, Plaintiff agreed to "authorize my employer to deduct Local, MEA and NEA dues, assessments and contributions as may be determined from time to time, unless I revoke this authorization in writing between August 1 and 31 of any year." Exhibit A, supra.
27. This authorization in the Continuing Membership Application was made void by the enactment of 2012 PA 53, which prohibits a public school employer from deducting dues or fees. This law, incorporated in MCL 423.210(1)(b) states:
- (1) A public employer or an officer or agent of a public employer shall not do any of the following: (b) []A public school employer's use of public school resources to assist a labor organization in collecting dues or service fees from wages of public school employees is a prohibited contribution to the administration of a labor organization. However, a public school employer's collection of dues or service fees pursuant to a collective bargaining agreement that is in effect on March 16, 2012 is not prohibited until the agreement expires or is terminated, extended, or renewed.
28. The payroll deduction authorization provision of the Continuing Membership Application was the only part of her agreement which made any mention of a revocation period. Exhibits A.
29. The payroll deduction authorization provision of the Continuing Membership Application only applies to the employer's ability to take deductions.
30. Neither the payroll deduction authorization provision nor the rest of the Continuing

- Membership Application mentions a “resignation” procedure. Exhibit A, supra.
31. Neither the payroll deduction authorization provision nor the rest of the Continuing Membership Application mentions adherence to Defendants’ bylaws, nor does it incorporate the Defendants’ bylaws by reference. Exhibit A, supra.
 32. The only provision of the Continuing Membership Application which states “membership is continuing unless I reverse this authorization in writing between August 1 and August 31 of any year” is in a section that was not checked off or otherwise agreed to by Plaintiff. Exhibit A, supra.
 33. With the authorization provision of the Continuing Membership Application being no longer valid by law, there was no applicable portion of the Continuing Membership Application which she agreed to that referenced any time constraints for revocation.
 34. The Continuing Membership Application signed in August 2002 did not provide a contractual basis for Plaintiff to owe membership dues or agency fees; rather, she only agreed that her employer could deduct such dues or fees if they were owed.

BREACH OF THE DUTY OF FAIR REPRESENTATION

35. Plaintiff hereby incorporates the preceding paragraphs as though restated herein.
36. Under Michigan law, the Defendants, as unions, owe a duty of fair representation to all employees in the mandatory collective bargaining units they represent.
37. The duty of fair representation is owed to all members, union and nonunion members alike, in the same bargaining unit. See, *Goolsby v Detroit*, 419 Mich 651, 661-65 (1984).
38. The duty of fair representation is a fiduciary duty. Michigan’s Supreme Court has stated: “The duty of fair representation is rooted in the concept that a union owes a fiduciary

duty to its members.” See, *Goolsby* at 683.

39. One of the basic requirements of a fiduciary duty is full and frank disclosure. See, e.g., *Urbain v Beierling*, 301 Mich App 114 (2013).
40. Acting in “good faith” is a requirement of a fiduciary duty. See, e.g., *Prentis Family Found v Barbara Ann Karmanos Cancer Inst*, 266 Mich App 39, 49 (2005).
41. A fiduciary owes a duty of good faith to his principal and is not permitted to act for itself at its principal's expense during the course of its agency. See, e.g., *Prentis supra*.
42. A fiduciary must act “without hostility or discrimination” toward any bargaining unit member. See, *Goolsby* at 661. This includes members who might exercise their rights to avoid paying dues or fees.
43. The Defendants failed to fulfill their duty when, prior to August 2013, they failed to actively provide full and frank information to members about their right to resign and avoid paying dues or fees during the month of August 2013.
44. The Defendants failed to fulfill their duty and did not act in good faith when they refused to allow resignations outside of the month of August after they have failed to properly inform their members of this August Window.
45. The Defendants failed to fulfill their duty where they placed their own financial interest ahead of Plaintiff’s and acted in such a manner so that Plaintiff was not given the necessary information about resigning from the Defendants and her ability to avoiding paying agency fees.

DEFENDANTS’ CONDUCT VIOLATES PERA

46. Plaintiff hereby incorporates the preceding paragraphs as though restated herein.

47. Following the enactment of the Freedom to Work Act, MCL 423.209 states that: “(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.”
48. MCL 423.210(2) states: “(2) A labor organization or its agents shall not do any of the following: (a) Restrain or coerce public employees in the exercise of the rights guaranteed in section 9. This subdivision does not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership.”
49. The Defendants’ threat of a legal action to compel Plaintiff’s payment of dues or fees that are not rightfully owed constitutes an attempt to restrain or coerce a public employee in her exercise of her right to withhold financial support from the union.
50. The Defendants’ refusal to allow bargaining unit members to resign during any month other than August is an impermissible attempt to restrain or coerce a public employee in the exercise of her right to withhold financial support from the union.

RELIEF REQUESTED

For the above reasons, Plaintiff requests that this Court issue declaratory relief that she be allowed to resign from the Defendants at any time. Plaintiff also requests declaratory and injunctive relief that she does not owe, and Defendants cannot attempt to collect, any dues or fees from her for the school year beginning September 1, 2013, or anytime thereafter unless she subsequently requests to be a union member and her membership is accepted by the Defendants. Furthermore, Plaintiff requests that this court declare that the Defendants, as unions, had and

have a duty to fully inform Plaintiff of changes in the law that affect her as a bargaining unit member, even if these changes run counter to the financial interests or policy positions of Defendants.

Additionally, Plaintiff requests that Defendants pay her costs and attorney fees, and award her any other relief that this Court find to be just and equitable.

Dated: February 28, 2014

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