STATE OF MICHIGAN
RICK SNYDER
GOVERNOR

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
MICHAEL ZIMMER
EXECUTIVE DIRECTOR

SHELLY EDGERTON
DIRECTOR

6/30/2017

Jeffrey S. Donahue
White Schneider Young & Chiodini, PC
1223 Turner Street, Suite 200
Lansing, MI 48906

Derk Wilcox
140 W. Main St.
P.O. Box 568
Midland, MI 48640

Re: Michigan Education Association,Ann Arbor Education Association v Ronald Shane Robinson
Case No.: CU16 B-008 Docket 16-005071

Greetings:

Enclosed is the Decision and Recommended Order by the Administrative Law Judge. This Decision concludes the handling of this matter by the Administrative Law Judge and the Michigan Administrative Hearing System. Any further communications regarding this matter must be addressed to the Michigan Employment Relations Commission (MERC) at either of the following locations:

MERC
3026 W. Grand Blvd.
Suite 2-750
Detroit, MI 48202

MERC
611 Ottawa, 2nd FL
P.O. Box 30015
Lansing, MI 48909

Telephone 313-456-3510.

NOTICE OF APPEAL RIGHTS TO THE MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Any party to the proceedings may file written exceptions to this Recommended Order and a brief in support thereof with the Michigan Employment Relations Commission (MERC). An original and four copies of the exceptions and brief in support must be filed with the Commission and a copy served on the opposite party or parties. At the same time, a statement of service must also be filed with the Commission stating the names of the parties served, and the date and manner of service of the exceptions on the other parties. If a party filing exceptions fails to establish that timely service on the opposite party or parties has been accomplished, the Commission may disregard the exceptions. Two copies of every exhibit submitted at the hearing by any party must also be filed with the exceptions.

By our calculation the exceptions and brief must be <u>received</u> by MERC by the close of business on July 24, 2017; however, the burden is on the parties to comply with the deadlines in the statute and Commission Rules. *Any questions or disputes regarding the calculation of the deadline for filing exceptions must be addressed to the Commission in writing at the above referenced addresses or at* ***313-456-3510****.*

If no exceptions are received within the above period or within such further period as the Commission may authorize, the Recommended Order will become the Order of the Commission. If exceptions are filed, cross exceptions and/or a brief in support of the Administrative Law Judge's Decision and Recommended Order may be filed by any other party within 10 days of the *date of mailing or* other service of the exceptions.

Please note that this Recommended Order may be edited prior to formal publication. Please notify the Bureau of Employment Relations Secretary at **313-456-2466** of any typographical or other non-substantive errors so that corrections can be made prior to formal publication.

For further information, please consult the General Rules and Regulations of the Employment Relations Commission, R423.101 et seq., available at www.michigan.gov/merc or call the Detroit office of the Bureau of Employment Relations at **313-456-3510**.

Sincerely,

Jill Willis

Jill Willis
Secretary to the Administrative Law Judge

CC:
Ann Arbor Education Association
Michigan Education Association
Ronald Shane Robinson

TRUE COPY

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
EMPLOYMENT RELATIONS COMMISSION

In the Matter of:

MICHIGAN EDUCATION ASSOCIATION, and its affiliate
ANN ARBOR EDUCATION ASSOCIATION, MEA/NEA,
Labor Organization-Respondents,

Case No. CU16 B-008
-and- Docket No.16-005071-MERC

RONALD SHANE ROBINSON,
Individual Charging Party.
_____/

APPEARANCES:

White Schneider P.C., by Jeffrey S. Donahue, for Respondents

Derk A. Wilcox and Patrick J. White, the Mackinac Center for Public Policy, for Charging Party

DECISION AND RECOMMENDED ORDER ON MOTIONS FOR SUMMARY DISPOSITION

On February 26, 2016, Ronald Shane Robinson, who is employed as a teacher by the Ann Arbor Public Schools (the Employer), filed an unfair labor practice charge with the Michigan Employment Relations Commission (the Commission) against his collective bargaining representative, 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, MCL 423.216. The charge was later amended to add Respondent's local affiliate, the Ann Arbor Education Association, MEA/NEA (AAEA), as co-Respondent. Pursuant to Section 16 of PERA, the charge was assigned to Julia C. Stern, Administrative Law Judge (ALJ) for the Michigan Administrative Hearing System.

On April 20, 2016, Respondent MEA filed a position statement in response to the charge and a motion for summary dismissal. On June 3, 2016, Robinson filed a response in opposition to Respondent's motion and a counter-motion for summary disposition. He also amended his charge to add the AAEA as Respondent. On August 16, 2016, Respondents filed a response in opposition to Robinson's motion. I held oral argument on both motions on August 29, 2016.

Based on facts as set forth below and not in dispute, I make the following conclusions of law and recommend that the Commission issue the following order.

The Unfair Labor Practice Charge:

As stated above, Robinson is employed as a teacher by the Employer and is a member of a bargaining unit represented by Respondents. Robinson was a member of Respondents from 1993 until he resigned his membership in August 2015. Respondent MEA acknowledged Robinson's resignation by letter dated August 31, 2015. However, on December 18, 2015, the MEA sent Robinson a copy of the form letter and information packet that it sends annually to individuals covered by collective bargaining agreements with so-called "agency fee" clauses and who have chosen not to be union members. The letter Robinson received stated that his collective bargaining agreement contained a provision which required him to either join Respondents or pay a service fee, but did not include any details about this agreement. Included in Robinson's packet was a form that Robinson was to fill out that gave him several options for either becoming a member or paying a service fee. Robinson did not return the form. On February 15, 2016, Robinson received a bill from the MEA for $495.36, the amount that Respondents claimed he owed as a service fee for the 2015-2016 school year. Robinson alleges that Respondents violated Section 10(3)(c) of PERA, and its duty of fair representation under Section 10(2)(a), by demanding that Robinson pay a service fee after he resigned his union membership.

2012 PA 349:

2012 PA 349 (Act 349) Act 349 was adopted by the Legislature and signed into law by Governor Rick Snyder in December 2012, with an effective date of March 28, 2013. Act 349 amended multiple sections of PERA, including Sections 9 and 10. Section 9 of PERA sets out the rights of public employees protected by PERA. These include the rights to form, join, or assist a labor organization. Act 349 added to this section an explicit right to refrain from engaging in any or all of the other activities listed in Section 9. It also added a new Section 9(2) and 9(3), which read as follows:

> (2) No person shall by force, intimidation, or unlawful threats compel or attempt to compel any public employee to do any of the following:
>
> (a) Become or remain a member of a labor organization or bargaining representative or otherwise affiliate with or financially support a labor organization or bargaining representative.
>
> (b) Refrain from engaging in employment or refrain from joining a labor organization or bargaining representative or otherwise affiliating with or financially supporting a labor organization or bargaining representative.
>
> (c) Pay to any charitable organization or third party an amount that is in lieu of, equivalent to, or any portion of dues, fees, assessments, or other charges or expenses required of members of or public employees represented by a labor organization or bargaining representative.

(3) A person who violates subsection (2) is liable for a civil fine of not more than $500.00. A civil fine recovered under this section shall be submitted to the state treasurer for deposit in the general fund of this state.

Section 10(1)(c) of PERA prohibits an employer from discriminating with respect to terms and conditions of employment in order to either encourage or discourage union membership. Act 349 removed the proviso to Section 10(1)(c) of PERA stating that public employers were not precluded by this section or any law of this state from making an agreement with the exclusive bargaining agent requiring employees to pay a service fee to a union as a condition of employment.

Act 349 also added a new Section 10(3), which reads:

(3) Except as provided in subsection (4), an individual shall not be required as a condition of obtaining or continuing public employment to do any of the following[1]:

(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.

New Sections 10(8) and 10(10) state that persons, public employers or labor organizations that violate Section 10(3) are liable for a civil fine of not more than $500, payable to the state treasury, and that a person who suffers injury as a result of a violation or threatened violation of Section 10(3) can bring a civil action for damages and/or injunctive relief.

Finally, Section 10(5), another new subsection, states:

[1]Section 10(4) allows the employers of public safety employees, and their bargaining representatives, to continue to enter into agreements requiring employees to contribute to the financial support of their bargaining representative.

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

Facts:

The 2013 MOA and Background

In 2009, Respondent and the Employer entered into a collective bargaining agreement, titled "Master Agreement," with an expiration date of August 30, 2011. Section 3.00, titled "Association Rights," included the following language:

3.000 ASSOCIATION RIGHTS

3.100 Membership Fees and Payroll Deductions

3.110 Payroll Deductions, Membership or Representation Fees

3.111 Teachers shall either submit a membership form or shall be considered agency shop fee payers to [the] Association.

3.112 Agency shop fees shall be determined by the Michigan Education Association in accordance with the law and Federal Court Decisions, and shall be reported by the Association as provided below.

***

3.114 Payment of membership dues or financial responsibility fees shall be made in twenty (20) equal deductions beginning the second paycheck in September and continuing through the twentieth (20^{th}) consecutive paycheck. Payroll deductions on one's assessments and for a teacher shall cease upon termination of said teacher's employment.

3.115.1 In the event of any action against the Board brought in a court or administrative agency because of its compliance with Section 3.110 of this agreement, the Association agrees to defend such action, at its own expense and though its own counsel ...

***

3.121 The Board shall within ten (10) days after each deduction is made, remit to the Association the total amount deducted for that period, including dues, assessments and fees for the Association, MEA, and NEA, accompanied by a list of teachers from whose salaries the deduction has been made.

3.122 The Board shall not be responsible for collecting any such dues, assessments, or fees not authorized to be deducted under Section 3.110.

On or about June 14, 2010, the Employer and Respondent entered into an agreement that substantially altered a number of provisions in the Master Agreement. This agreement also extended the amended agreement Master Agreement through the 2011-2012 school year and subsequent school years until the Employer's revenues rose by a stated amount. The June 14, 2010, agreement did not alter Section 3.000.

In March 2012, PERA was amended to make it unlawful for a public school employer, like the Employer, to deduct union dues or fees from the paychecks of employees.

In December 2012, Act 349 was passed by the Legislature and signed into law. Because the Legislature did not vote to give Act 349 immediate effect, it did not become effective until March 28, 2013.

On March 18, 2013, Respondent and the Employer entered into a MOA which embodied their agreement on a number of mandatory bargaining subjects, including an across-the-board three percent salary reduction beginning with the 2013-2014 school year. The 2013 MOA included these paragraphs:

4. The parties agree to the 3.00[sic] Association Rights amendments. If the parties ratify this memorandum of agreement on or before March 27, 2013, Article 3.00 shall be effective immediately upon ratification of the agreement by both parties and shall continue in effect through June 30, 2016.

* * *

7. This memorandum does not supersede or replace the agreement between the AAEA and AAPS [District] entered into on or about June 14, 2010.

***

9. The parties agree that should any legislation or administrative rule(s) be passed which would result in any penalties to the District (financial or otherwise) as a result of entering into the 3 year extension of Article 3.00, Article 3.00 will be modified or if necessary deleted, so that it complies with and is not in violation of any legislation or administrative rule(s) so that any penalties (financial or otherwise) will not impact the District in any manner.

Attached and made a part of the 2013 MOA was a redrafted Section 3.000. The redraft stated that in the event that Michigan prohibited the employer from assisting in collecting dues or service fees from wages this law would supersede any and all provisions to the contrary, and the collection of dues and service fees would be the exclusive responsibility of Respondents. Also added was language stating that Section 3.000 would be effective upon ratification of the 2013 MOA agreement and continue in effect through June 30, 2016.

2014 and 2015 Agreements

On June 20, 2014, Respondent and the Employer executed another MOA which incorporated their agreement on certain subjects for the 2014-2105 school year only. The June 2014 MOA did not mention Section 3.000, agency shop, or service fees. In August 2015, the Respondent and Employer signed three documents. All three were dated August 11, 2015. The first document, titled tentative agreement, began with a statement that the Respondent and Employer had reached a successor agreement for the 2015-2106 school year, the term of which was to be July 1, 2015, to June 30, 2016. This was followed by nine numbered paragraphs incorporating their agreement on various subjects. The final paragraph of this first document said, "In all other respects, excluding prohibited subjects, except as stated herein or in the accompanying letter of agreement, the terms and conditions of the expired agreement shall continue." The second document was a MOA stating that the parties agreed that Respondent was permitted and encouraged to give input on and participate in the development of policies pertaining to prohibited subjects of bargaining. The third document, another MOA, stated that the parties agreed that "the Agency Shop Agreement, previously entered into continued until June 30, 2016."

Demand that Robinson Pay a Service Fee

As stated above, Robinson was a member of Respondents until he sent Respondents a letter, on August 1, 2015, resigning his membership. On August 31, 2015, Respondent sent Robinson a letter acknowledging his resignation. The letter told Robinson he owed $1,363.47 in unpaid dues that had accrued before the date of his resignation. Respondent did not tell Robinson in this letter that he continued to have an obligation, as a non-member, to pay a service fee. Robinson paid the amount in the letter.

On December 18, 2015, Respondent sent Robinson a copy of the form letter and information packet it sent annually to non-members required to pay a service fee. Robinson's letter stated that his collective bargaining agreement contained a provision which required him to join Respondent or pay a service fee. Along with financial statements and information about Respondent's expenditures, the packet included a document entitled "Service Election Form" with four options: (1) becoming a member and paying stated amount of dues; (2) paying a "full" service fee to Respondent in a stated amount; (3) paying a "reduced" service fee in a stated amount; and (4) paying a "reduced" service fee and challenging the amount of that fee. For individuals not paying by cash or check, the form had a spot for authorizing payment by bank draft or credit card. Robinson did not return the form. On February 15, 2016, Robinson received a bill from the MEA for his "full" service fee for the 2015-2016 school year. Nine days later, he

filed the instant charge. When the oral argument was held on the motions in this case in August 2016, Respondents had not yet referred Robinson's account to a collection agency or taken any legal action to collect this bill.

Discussion and Conclusions of Law:

Respondents maintain that their actions were lawful because they entered into a lawful union security agreement on March 18, 2013, which obligated unit members to pay dues or a service fee through June 30, 2016. They argue that this agreement was lawful and enforceable under Section 10(5) of PERA because: (1) the agreement was entered into prior to the effective date of Act 349 and was not extended or renewed by subsequent agreements; and (2) the agreement extended the agency fee obligation for the reasonable length of time of three years. Respondents distinguish *Taylor Sch Dist,* 28 MPER 66 (2015), aff'd *Taylor Sch Dist and Taylor Federation of Teachers, AFT Local 1085 v Nancy Rhatigan and Rebecca Metz,* ___ Mich App _____ (2016), (Docket No. 326128, issued December 13, 2016) on the basis that the union security agreement in that case was for ten years, a length of time the Commission found to be "excessive and unreasonable." Since the March 2013 union security agreement was lawful and enforceable, Respondents had the right to enforce it by demanding that Robinson pay a service fee for the 2015-2016 school year. In response, Robinson argues that the length of the agreement in *Taylor* was only one of the factors upon which the Commission relied in *Taylor* to find that agreement unlawful, and that this was not the determinative factor. Robinson also argues that the 2014 and 2015 agreements, because they modified the underlying collective bargaining agreement in effect on March 28, 2013, extended or renewed the 2013 MOU. The union security agreement was not enforceable under Section 10(5) of PERA, Robinson asserts, because it was extended or renewed after the effective date of the statute. Therefore, Respondents were prohibited by Section 10(2)(a) and Section 10(3)(c) of PERA from demanding that he pay a service fee for the 2015-2016 school year after he resigned his union membership.

The Act 349 amendments, known as the "Right to Work" or "Freedom to Work" amendments, substantially changed the landscape of public sector collective bargaining in Michigan. Since those amendments took effect, the Commission and the Court of Appeals have issued several decisions interpreting those amendments. Among these decisions was *Taylor,* which, like the instant case, involved a union security agreement entered into by an employer and union after the amendments were signed into law but before their effective date. The Commission issued its decision in *Taylor* before the motions in the instant case were filed and after I heard oral argument. However, the case was pending on appeal before the Court of Appeals which had not yet issued a decision. The parties in the instant case, therefore, framed their arguments in terms of the Commission's decision. On December 16, 2016, the Court of Appeals issued an unpublished decision in *Taylor,* but the decision was approved for publication on February 9, 2017. As discussed below, the Court's holdings make some of the arguments made in the instant case irrelevant.

In *Taylor,* the Commission majority held, first, that the ten year duration of the union security agreement in that case was excessive and unreasonable. It noted that the agreement was intended to delay the application of Act 349 for ten years beyond its effective date, and that "in so doing Respondents have effectively compelled unwilling union members, in violation of

Section 9 of PERA, to financially support the Union for the next decade." The Commission then suggested that some limit had to be set by the Commission on the length of any agreement between a union and public employer, because union representatives and school boards should not be allowed to bind their successors indefinitely. It asked, "Is fifty years, twenty-five years, or fifteen years acceptable?" However, the Commission did not indicate the length of agreement that it might consider reasonable, but turned its focus to the respondents' motives for entering into the agreement in *Taylor*. It stated:

> The answer is not found in the length of the contract, but in whether the employer has violated Section 10(1)(a) and (c) of PERA by interfering with, restraining, or coercing public employees in the exercise of rights guaranteed by Section 9 *in order to encourage membership in a labor organization."* [Emphasis in original].

The Commission then held that in entering into the agreement in *Taylor*, the employer school district violated Section 10(1)(a) of PERA by interfering with its employees' rights under Section 9 not to support a union. It also held that by entering into the agreement, the employer unlawfully discriminated against employees in order to encourage membership in a labor organization, in violation of Section 10(1)(c) of PERA. The Commission concluded that the employer had demonstrated hostility toward the employees' protected rights by entering into an agreement that compelled them to support the union after the effective date of Act 349. The Commission majority also concluded that the union violated its duty of fair representation, and attempted to cause the employer to unlawfully discriminate against employees, by entering into this agreement. It held:

> The Union acted arbitrarily, in a manner that discriminated against some bargaining unit members, and was indifferent to the interest of those members. It was aware that PA 349 was pending when it negotiated for and ratified a Union Security Agreement that it knew would compel unwilling members to support it financially for ten years. The Union asserts that it was acting in the interest of all members and supports that contention by noting that the majority of the membership ratified the agreement and was, therefore, satisfied with the Union's conduct. We disagree. Imposing a lengthy financial burden on bargaining unit members, in order to avoid the application of a state law for ten years, is arbitrary, indifferent and reckless.

The respondents in *Taylor* argued that Section 10(5) of Act 349 expressly permitted parties to create, retain, and enforce, after Act 349 took effect, union security provisions which were in effect prior to the statute's effective date. [2] The Commission did not discuss Section 10(5) of PERA in its *Taylor* decision. However, the Court of Appeals in its decision squarely rejected the respondents' interpretation of Section 10(5). First, the Court noted that the limitation contained in the last sentence of Section 10(5), by its terms, expressly applied only to agreements that violated Section 10(3) of Act 349, but that the Commission had not found a violation of Section 10(3). Rather, as noted above, the Commission found that by entering into the agreement

[2] I was the ALJ in *Taylor,* and held in my Decision and Recommended Order in that case that Act 349 clearly and explicitly permitted the enforcement, after March 28, 2013, of union security agreements entered into before that date.

the school district violated Section 10(1)(a) and 10(1)(c), and the union Section 10(2)(a) and 10(2)(c). Extending the limitation in Section 10(5) to "*all agreements* made before the effective date of Section 349 that violated *any provision* of PERA," the Court held, would contravene the plain language of the statute. [Emphasis in original].Thus, the Court concluded, Act 349 "is not limited to agreements entered into after the effective date of the statutory amendment."

The Court went on to explain:

> Having said that, we recognize that statutes and statutory amendments generally apply prospectively, absent specific language of the Legislature to the contrary. *Brooks v Mammo,* 254 Mich App 486, 493, 657 N.W. 2d 793 (2002). In this case, however, as discussed above, the Legislature explicitly adopted (in Section 10(5) of 2012 PA 49,) a *limited* prospectivity, and thus at least implicitly indicated some retrospective applicability of 2012 PA 349 (outside the scope of that limitation.) See *STC, Inc.,* 257 Mich App at 536, 669 N.W. 2d 594. [Emphasis in original] We note, however, that retrospective applicability is a term that generally is used to denote applicability to "a pre-enactment cause of action." *In re Certified Questions (Karl v Bryant Air Conditioning Co),* 416 Mich 558, 331 N.W. 2d 456 (1982). Here there was no "cause of action" before 2012 PA 349 was enacted or even before its effective date. Moreover "a statute is not regarded as operating retrospectively [solely] because it relates to an antecedent event." *Hughes v Judges' Retirement Board,* 407 Mich 75, 86, 282 N.W.2d 160 (1979). And 2012 PA 349 did not "take [ ] away or impair [ ] vested rights acquired under existing laws, or create [ ] a new obligation and impose [ ] a new duty, or attach [ ] a new disability with respect to transactions or considerations already past" *Id.,* at 85; *Ballog v Knight Newspapers, Inc* 381 Mich 527, 533-534, 164 N.W. 2d 19 (1969). Therefore, we are persuaded that at least some retrospective applicability of 2012 is appropriate in the instant case and called for by the plain language of the legislation itself. . . . *We need not decide in this case just how far that retrospective applicability extends, but at a minimum conclude, under the circumstances before us, that 2012 PA 349 properly applies to agreements entered into after the enactment of that statutory amendment but before its effective date.* [Emphasis added].

Thus, the Court in *Taylor* held that Section 10(5) of Act 349 did *not* authorize parties to enter into union security agreements between the date Act 349 was enacted and that statute's effective date, and did *not* make these agreements enforceable after Act 349 took effect.

The Court then reviewed the Commission's unfair labor practice findings. The Court held that the school district in *Taylor* violated Section 10(1)(a) by enforcing the union security agreement after Act 349 took effect. It also affirmed the Commission's conclusion that the district violated Section 10(1)(c) of PERA by entering into and enforcing that union security agreement.

The Court also agreed with the Commission that the union in *Taylor* violated Section 10(2)(a) and (c) by entering into the union security agreement in that case. The Court noted that "the union's execution and ratification of the 10-year union security agreement occurred after the

passage and signing into law, and shortly before the effective date of, a significant state law that greatly impacted labor relations and that rendered such a requirement unlawful." The Court also noted that the agency fee agreement was signed at almost the same time as a collective bargaining agreement that included a 10 percent reduction in wages, suspension of pay increases, and other changes that negatively impacted bargaining unit members. The Court concluded:

> Under these circumstances, it was indeed reasonable for MERC to conclude that the union took deliberate action, in entering into the union security agreement to its own financial advantage, that would essentially subvert and undermine the plain language and intent of state law in a manner that was reckless and indifferent to the interests of persons to whom it owned[sic] a duty of fair representation [citation omitted]. ... Under the circumstances of this case, and given the timeline of events leading up to the execution of the union security agreement under the wire of the effective date of 2012 PA 349, and the signing of a CBA that substantially negatively impacted union members... MERC's conclusion that the union's conduct rose to the level of arbitrary, discriminatory and indifferent conduct in violation of its duty of fair representation found support in the record and was not based on a substantial and material error or law.

I find that, in light of the Court's decision above, the only question properly before me is whether the circumstances in this case are sufficiently distinguishable from those in *Taylor* to warrant a conclusion different from that reached in that case. As was the case with the union security agreement in *Taylor,* Respondents executed and ratified the 2013 MOA after Act 349 was passed and signed into law, and shortly before the statute's effective date. As in *Taylor,* Respondents unquestionably understood, when they entered into the 2013 MOA, that the Legislature's intent was to make union security agreements unlawful, at least prospectively. As with the union in *Taylor,* Respondents also knew that they were limiting the ability of members of their bargaining unit to exercise a right explicitly conferred upon them by Act 349, i.e., the right to refrain from financially supporting their bargaining agent. The only difference, in fact, between the circumstances of this case and those in *Taylor* is that in *Taylor* the union security agreement extended for ten years while in this case it was only three years and three months. Although the Court in *Taylor* mentioned the length of the agreement in that case, I see nothing in its discussion of either the charges against the school district or the charges against the union that indicate the Court saw the length of the agreement as a pivotal factor. Rather, the Court repeatedly emphasized the timing of the agreement, what the Court saw as the respondents' attempt to thwart the intent of the Legislature, and the fact that the charging party employees were prevented by the agreement from exercising a right that they had under Section 9. I conclude that the shorter length of the union security agreement in this case does not distinguish it from *Taylor* and that, in accord with the Court's findings in *Taylor,* the union security agreement contained in the 2013 MOA in this case was unlawful and unenforceable. I find that because the union security agreement in 2013 MOA was unenforceable, Respondents' demands that Robinson pay them a service fee for the 2015-2016 school year unlawfully restrained and/or coerced him in his exercise of his Section 9 rights in violation of Section 10(2)(a) of PERA.[3] I recommend, therefore, that the Commission issue the following order.

---

[3] Robinson alleged that Respondents' demands also violated Section 10(3) of PERA. That Section, as noted above, states that "an individual shall not be required as a condition of obtaining or continuing public employment to ...

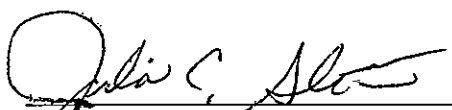
RECOMMENDED ORDER

Respondents Michigan Education Association and Ann Arbor Education Association, their officers, agents, and representatives, are hereby ordered to cease and desist from:

1. Interfering with, restraining or coercing Ronald Robinson in the exercise of his right guaranteed by Section 9 of PERA to refrain from contributing to the financial support of a labor organization by demanding that he pay them a service fee for the 2015-2016 school year after he resigned his union membership in August 2015.

2. Post the attached notice to members in all places on the premises of the Ann Arbor Public School where notices to bargaining unit members are customarily posted for a period of (30) consecutive days or, in the alternative, mail copies of this notice to all unit members within 30 days of the date of this order.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION



Julia C. Stern
Administrative Law Judge
Michigan Administrative Hearing System

Dated: June 30, 2017

pay any fees . . . to a labor organization or bargaining representative." However, the union security clause made part of the 2013 MOA does not explicitly require unit members to pay dues or fees as a condition of employment, and Respondents did not seek, or give any indication of an intention to seek, Robinson's discharge for failure to pay a service fee.

NOTICE TO EMPLOYEES

UPON THE FILING OF AN UNFAIR LABOR PRACTICE CHARGE BY RONALD SHANE ROBINSON, AN INDIVIDUAL, THE MICHIGAN EMPLOYMENT RELATIONS COMMISSION HAS FOUND THE **MICHIGAN EDUCATION ASSOCIATION AND THE ANN ARBOR EDUCATION ASSOCIATION** TO HAVE COMMITTED AN UNFAIR LABOR PRACTICE IN VIOLATION OF THE MICHIGAN PUBLIC EMPLOYMENT RELATIONS ACT (PERA). PURSUANT TO THE TERMS OF THE COMMISSION'S ORDER,

WE HEREBY NOTIFY THE MEMBERS OF OUR BARGAINING UNIT THAT:

WE WILL NOT interfere with, restrain or coerce Ronald Shane Robinson in the exercise of his right guaranteed by Section 9 of PERA to refrain from contributing to the financial support of a labor organization by demanding that he pay a service fee for the 2015-2016 school year after Robinson resigned his union membership in August 2015.

MICHIGAN EDUCATION ASSOCIATION AND ANN ARBOR EDUCATION ASSOCIATION

By: _____

Title: _____

Date: June 30, 2017

If this notice is not mailed to members, it must remain posted for a period of 30 consecutive days and must not be altered, defaced or covered by any material. Any questions concerning this notice may be directed to the office of the Michigan Employment Relations Commission, Cadillac Place, 3026 W. Grand Blvd, Suite 2-750, P.O. Box 02988, Detroit, Michigan 48202. Telephone: (313) 456-3510.
Case No. CU16 B-008/Docket No. 16-005071-MERC.