

MACKINAC  **CENTER**
LEGAL **FOUNDATION**

December 12, 2017

VIA EMAIL ONLY AT merc-ulps@michigan.gov

Michigan Employment Relations Commission

3026 West Grand Boulevard, Suite 2-750

P.O. Box 02988

Detroit, MI 48202

Re: Three Unfair Labor Practice charges for filing by teacher Joshua Khon

Dear Madame/Sir:

Enclosed please find three Unfair Labor Practice charges for filing by teacher Joshua Khon against his employer, the Armada Area School District, local union MEA-NEA Local 1 (Armada EA), and the Michigan Education Association.

These are being filed here via email according to the MERC Policy On Email & Facsimile Filing adopted 8-15-17. The Charging party will make the necessary service and subsequently file a notice of that service when made.

Thank you for your attention to this matter.

Regards,



Derk Wilcox
Senior Attorney

Enc.

cc: Joshua Khon
Jeffrey S. Donahue, Esq. (courtesy copy)



CHARGE

Michigan Department of Licensing and Regulatory Affairs
Employment Relations Commission (MERC)
Labor Relations Division
313-456-3570

Authority: P.A. 380 of 1965, as amended.

INSTRUCTIONS: File an original and 4 copies of this charge (including attachments) with the Employment Relations Commission at: Cadillac Place, 3026 W. Grand Boulevard, Suite 2-750, PO Box 02988, Detroit MI 48202-2988 or 611 W. Ottawa St., 2nd Floor, PO Box 30015, Lansing, MI 48909. The Charging Party must serve the Charge on the opposing side within the applicable statute of limitations, and must file a statement of service with MERC. (Refer to the "How to File a Charge" document under the "Forms" link at www.michigan.gov/merc.)

Complete Section 1 if you are filing charges against an employer and/or its agents and representatives. —or—
Complete Section 2 if you are filing charges against a labor organization and/or its agents and representatives.

1. EMPLOYER AGAINST WHICH THE CHARGE IS BROUGHT Check appropriate box: Private Governmental

Name and Address:
Armada Area School District
74500 Burk Street
Armada, MI 48005

2. LABOR ORGANIZATION AGAINST WHICH THE CHARGE IS BROUGHT

Name and Address:

3. CHARGE

Pursuant to the Labor Mediation Act (LMA) or Public Employment Relations Act (PERA) (*cross out one*), the undersigned charges that the above-named party has engaged in or is engaging in unfair labor practices within the meaning of the Act.

On an attached sheet you must provide a clear and concise statement of the facts which allege a violation of the LMA or PERA, including the date of occurrence of each particular act and the names of the agents of the charged party who engaged in the complained of conduct. The charge should describe who did what and when they did it, and **briefly** explain why such actions constitute a violation of the LMA or PERA.

The Commission may reject a charge for failure to include the required information. However, it is not necessary to present your case in full at this time. Documentary material and exhibits ordinarily **should not** be submitted with this charge form.

4. Name and Address of Party Filing Charge (Charging Party)
(if labor organization, give full name, including local name and number)
Joshua Khon c/o Derk Wilcox, Esq. (P66177), Mackinac Center legal Foundation, 140 West Main Street, Midland, MI 48640

Telephone Number:

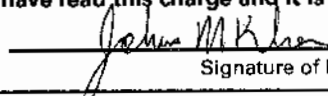
(989) 698-1920

5. List ALL related MERC case(s) (if any): _____
(Name of parties)

Case No.: _____ Judge: _____

Case No.: _____ Judge: _____

I have read this charge and it is true to the best of my knowledge and belief.


Signature of Representative/Person Filing Charge

Email: [Mackinac.org
wilcox@mackinac.org](mailto:wilcox@mackinac.org)

Telephone/Cell No.:
989-698-1920

Print Name and Title:
Joshua Khon

Fax No.:
989-631-0964

Street Address:
c/o Mackinac Center Legal Foundation, 140 West Main Street

City: Midland

State:
MI

Zip Code: 48640

The Department of Licensing and Regulatory Affairs will not discriminate against any individual or group because of race, sex, religion, age, national origin, color, marital status, disability, or political beliefs. If you need assistance with reading, writing, hearing, etc., under the Americans with Disabilities Act, you may make your needs known to this agency.

3. Charge

Petitioner is teacher in the bargaining unit represented by Respondent MEA-NEA Local 1. Petitioner resigned from the union in 2012, and has been a fee payer since. He has paid his service fees in full up to and through the 2016-17 school year.

On or about March 6, 2013, Respondent school district and Respondent MEA-NEA Local 1 entered into a tentative collective bargaining agreement after the state's right-to-work law, 2012 PA 349, was enacted on December 11, 2012, and a little more than three weeks before it became effective on March 28, 2013. Most terms of the collective bargaining agreement were effective from 2013-2016. However, the 'union security' provision requiring the payment of dues (if a member), or a "service fee" (if not a member), was made as "a separate agreement between the parties" and expired August 31, 2023.

The Armada Board of education ratified the three-year agreement on March 19, 2013. A Letter of Agreement ratifying the ten-year union security agreement was ratified on August 20, 2013 – well after the effective date of 2012 PA 349. (See the Attached Letter of Agreement)

On March 16, 2016, a new five-year collective bargaining agreement was signed by the Armada School District.

This Letter of Agreement containing the ten-year security agreement was invalid when it was made as it was a new agreement made after the effective date of 2012 PA 349, in violation Section 10(5) of PERA: "This subsection applies only to an agreement, contract, understanding, or practice that takes effect or is extended or renewed after March 28, 2013."

The dual collective bargaining agreement and Letter of Agreement are similar to the situations in *Taylor Sch Dist v Rhatigan*, 318 Mich App 617 (2017), and *Clarkston Community Schools and CEA v Conwell*, MERC Case Nos. C15 K-148, CU15 K-039, and those opinions would control. Applied here, those opinions would make the ten-year security agreement void and unenforceable.

Even if not void when made in 2013, the security agreement became ineffective when the new collective bargaining agreement was executed in March 2016, per Section 10(5) of PERA.

Petitioner became aware of the illegality of the ten-year agreement sometime following the issuance of the *Clarkston Community Schools* opinion, which was issued by this Commission on September 18, 2017. Hence, this Unfair Labor Practice Charge is timely.

Petitioner seeks: A ruling that enforcing the ten-year security agreement is an Unfair Labor Practice; A ruling that he no longer is required to pay fees; A refund for fees he has already paid; and, That a civil fine be levied upon Respondents under Section 10(8) of PERA.

LETTER OF AGREEMENT

Between Armada Area Schools and

MEA/NEA LOCAL 1, Armada Education Association

The parties agree that immediately upon ratification, this Letter of Agreement is in effect until August 31, 2023.

ARTICLE V - ASSOCIATION DUES, SERVICE FEE AND PAYROLL DEDUCTIONS

1. Each bargaining unit member shall, as a condition of employment, (1) on or before thirty (30) days from the first day of active employment or the effective date of this Agreement, whichever is later, join the Association, or (2) pay a Service Fee to the Association, pursuant to the Association's "Policy Regarding Objections to Political-Ideological Expenditures" and the Administrative Procedures adopted pursuant to that policy. The Service Fee shall not exceed the amount of Association dues collected from Association members. The bargaining unit member may authorize payroll deduction for such fee. In the event that the bargaining unit member shall not pay such Service Fee directly to the Association, or authorize payment through payroll deduction, the Employer shall, pursuant to MCLA 408.477; MSA 17.277(7) and at the request of the Association, deduct the Service Fee from the bargaining unit member's wages and remit same to the Association. Payroll deductions made pursuant to this provision shall be made in equal amounts, as nearly as may be, from the paychecks of each bargaining unit member. Moneys so deducted shall be remitted to the Association, or its designee, no later than twenty (20) days following deduction.
7. Pursuant to Chicago Teachers Union v Hudson, 106 S Ct 1066 (1986), the Association has established a "Policy Regarding Objections to Political-Ideological Expenditures." That Policy, and the Administrative Procedures (including the timetable for payment) pursuant thereto, applies only to non-union bargaining unit members. The remedies set forth in that Policy shall be exclusive, and unless and until such procedures, including any administrative or judicial review thereof, shall have been availed of and exhausted, no dispute, claim or complaint by an objecting bargaining unit member concerning the application and interpretation of this Article shall be subject to the grievance procedures set forth in this Agreement.
8. Any bargaining unit member who is a member of the Association, or who has applied for membership, may sign and deliver to the Employer an assignment authorizing deduction of dues, assessments and contributions to the Association as established by the Association. Such authorization shall continue in effect from year-to-year unless revoked according to the procedure outlined in the MEA Constitution, Bylaws and Administrative Procedures. Pursuant to such authorization, the Employer shall deduct such dues, assessments and contributions from the regular salary check of the bargaining unit member each month for ten (10) months, beginning in September and ending in June of each year.
9. Upon appropriate written authorization from the bargaining unit member, the Employer shall deduct

ARTICLE XX – DURATION OF AGREEMENT

1. The terms and conditions of this agreement shall be in full force and effect, from the first day of September 2013, and shall continue in full force and effect until the 31st day of August 2016.

IN WITNESS WHEREOF:

The parties hereto have executed this Agreement by their duly authorized representatives on the 19th day of March, 2013

ARMADA EDUCATION ASSOCIATION
MEA-NEA, LOCAL 1

BY

Jana Lee
President/Chief Negotiator

Brenda Jager
Secretary

Paula Hubbart
President, Local 1

ARMADA BOARD OF EDUCATION

BY

Michelle Massey
Superintendent

Cheryl Sherry 8/20/13
Board President



CHARGE

Michigan Department of Licensing and Regulatory Affairs
Employment Relations Commission (MERC)
Labor Relations Division
313-456-3510

Authority: P.A. 380 of 1965, as amended.

INSTRUCTIONS: File an original and 4 copies of this charge (including attachments) with the Employment Relations Commission at: Cadillac Place, 3026 W. Grand Boulevard, Suite 2-750, PO Box 02988, Detroit MI 48202-2988 or 611 W. Ottawa St., 2nd Floor, PO Box 30015, Lansing, MI 48909. The Charging Party must serve the Charge on the opposing side within the applicable statute of limitations, and must file a statement of service with MERC. (Refer to the "How to File a Charge" document under the "Forms" link at www.michigan.gov/merc.)

Complete Section 1 if you are filing charges against an employer and/or its agents and representatives. —or—
Complete Section 2 if you are filing charges against a labor organization and/or its agents and representatives.

1. EMPLOYER AGAINST WHICH THE CHARGE IS BROUGHT Check appropriate box: Private Governmental

Name and Address:

2. LABOR ORGANIZATION AGAINST WHICH THE CHARGE IS BROUGHT

Name and Address:

MEA-NEA Local 1
38550 Garfield Road, Suite B
Clinton Township, MI 48038

3. CHARGE

Pursuant to the Labor Mediation Act (LMA) or Public Employment Relations Act (PERA) (~~cross out one~~), the undersigned charges that the above-named party has engaged in or is engaging in unfair labor practices within the meaning of the Act.

On an attached sheet you must provide a clear and concise statement of the facts which allege a violation of the LMA or PERA, including the date of occurrence of each particular act and the names of the agents of the charged party who engaged in the complained of conduct. The charge should describe who did what and when they did it, and briefly explain why such actions constitute a violation of the LMA or PERA.

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4. Name and Address of Party Filing Charge (Charging Party)
(if labor organization, give full name, including local name and number)
Joshua Khon c/o Derk Wilcox, Esq. (P66177), Mackinac Center legal
Foundation, 140 West Main Street, Midland, MI 48640

Telephone Number:

(989) 698-1920

5. List ALL related MERC case(s) (if any): _____
(Name of parties)

Case No.: _____ Judge: _____

Case No.: _____ Judge: _____

I have read this charge and it is true to the best of my knowledge and belief.

Signature of Representative/Person Filing Charge

Email: [mackinac.org](mailto:wilcox@mackinac.org)
wilcox@mackinac.org

Telephone/Cell No.:
989-698-1920

Print Name and Title:
Joshua Khon

Fax No.:
989-631-0964

Street Address:
c/o Mackinac Center Legal Foundation, 140 West Main Street

City: Midland

State:
MI

Zip Code: 48640

The Department of Licensing and Regulatory Affairs will not discriminate against any individual or group because of race, sex, religion, age, national origin, color, marital status, disability, or political beliefs. If you need assistance with reading, writing, hearing, etc., under the Americans with Disabilities Act, you may make your needs known to this agency.

3. Charge

Petitioner is teacher in the bargaining unit represented by Respondent MEA-NEA Local 1. Petitioner resigned from the union in 2012, and has been a fee payer since. He has paid his service fees in full up to and through the 2016-17 school year.

On or about March 6, 2013, Respondent school district and Respondent MEA-NEA Local 1 entered into a tentative collective bargaining agreement after the state's right-to-work law, 2012 PA 349, was enacted on December 11, 2012, and a little more than three weeks before it became effective on March 28, 2013. Most terms of the collective bargaining agreement were effective from 2013-2016. However, the 'union security' provision requiring the payment of dues (if a member), or a "service fee" (if not a member), was made as "a separate agreement between the parties" and expired August 31, 2023.

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8. Any bargaining unit member who is a member of the Association, or who has applied for membership, may sign and deliver to the Employer an assignment authorizing deduction of dues, assessments and contributions to the Association as established by the Association. Such authorization shall continue in effect from year-to-year unless revoked according to the procedure outlined in the MEA Constitution, Bylaws and Administrative Procedures. Pursuant to such authorization, the Employer shall deduct such dues, assessments and contributions from the regular salary check of the bargaining unit member each month for ten (10) months, beginning in September and ending in June of each year.
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ARMADA EDUCATION ASSOCIATION
MEA-NEA, LOCAL 1

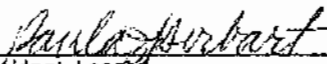
BY



President/Chief Negotiator



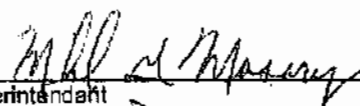
Secretary



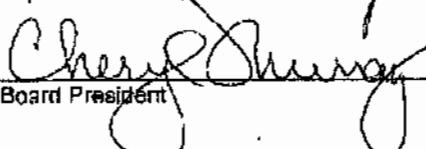
President, Local 1

ARMADA BOARD OF EDUCATION

BY



Superintendent



Board President

8/20/13



CHARGE

Michigan Department of Licensing and Regulatory Affairs
Employment Relations Commission (MERC)
Labor Relations Division
313-456-3510

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Name and Address:

Michigan Education Association
1216 Kendale Blvd.
East Lansing, MI 48823

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Joshua Khon c/o Derk Wilcox, Esq. (P66177), Mackinac Center legal
Foundation, 140 West Main Street, Midland, MI 48640

Telephone Number:

(989) 698-1920

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(Name of parties)

Case No.: _____

Judge: _____

Case No.: _____

Judge: _____

I have read this charge and it is true to the best of my knowledge and belief.

Signature of Representative/Person Filing Charge

Email: mackinac.org
wilcox@mackinac.org

Telephone/Cell No.:
989-698-1920

Print Name and Title:

Joshua Khon

Fax No.:

989-631-0964

Street Address:

c/o Mackinac Center Legal Foundation, 140 West Main Street

City:

Midland

State:

MI

Zip Code:

48640

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ARTICLE XX – DURATION OF AGREEMENT

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IN WITNESS WHEREOF:

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ARMADA EDUCATION ASSOCIATION
MEA-NEA, LOCAL 1

BY Jane Lee
President/Chief Negotiator

Brenda Jager
Secretary

Paula Herbert
President, Local 1

ARMADA BOARD OF EDUCATION

BY Bill Massey
Superintendent

Cheryl Murray 8/20/13
Board President