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MICHIGAN COURT OF APPEALS CLARIFIES RIGHT-TO-WORK RIGHTS

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Michigan's Freedom To Work ("FTW") laws, also known as right-to-work, took effect in March 2013, with similar, but separate, provisions for public and private sector employees. Since its enactment, FTW cases have been winding through the Michigan Employment Relations Commission ("MERC") and courts, as employers, unions and employees seek to understand its effect. Recently, the Michigan Court of Appeals, in Saginaw Education Association v. Eady-Miskiewicz, _____ Mich App _____ (May 2, 2017), clarified the procedures for public sector employee withdrawal from union membership.

Eady involved 11 employees with similar claims against three separate school districts. In each case, the public sector union's checkoff card limited employees' rights to resign from union membership to a one-month period each year. Employees who sought to resign from the union at times other than the specified one-month period had to continue paying union dues. The employees filed unfair labor practice charges with MERC, which decided the unions had violated the FTW laws by not stopping dues collection immediately after receiving the resignations.

All three unions appealed to the Michigan Court of Appeals. In the appeal, the

unions argued that: (1) the 30-day resignation period was reasonable; (2) the checkoff card, with its 30 day resignation window, was a contract which should be respected; and (3) the union had the right to make its own rules restricting the right to resign. The appellate court rejected all of the unions' arguments. The court concluded that the FTW laws prohibit a union or employer from forcing "a public employee to 'remain a member of a labor organization or bargaining representative or otherwise affiliate with or financially support a labor organization or bargaining representative.'" The court ruled that public sector employees can withdraw from union membership at any time. This is the rule for public sector employees, unions and employers.

Union obligations to the employee do not stop after the employee has terminated union membership and stopped paying union dues.

Withdrawal rights for private sector employees are more complicated. The National Labor Relations Board (NLRB) governs private sector right-to-work rules. The NLRB has two basic rules that apply to dues obligations following resignation from a union in a right to work state. First (and similar to Michigan's public sector rule), a union resignation in a right-to-work state is immediately effective to end union dues obligations when the checkoff card links dues to union membership (e.g., the checkoff card provides for the deduction of membership dues).

This leads to the second NLRB rule. Recognizing how easy it is for an employee in a right-to-work state to stop dues payments, creative unions have developed a NLRB-approved checkoff card to uncouple union dues from union membership and delay the termination of the dues obligation. When the checkoff card states that dues are obligated whether or not an employee is a member of the union, the NLRB requires that the employee adhere to the specific termination terms of the checkoff card and does not allow union dues to automatically end when union membership ends.

Union obligations to the employee do not stop after the employee has terminated union membership and stopped paying union dues. The NLRB and Michigan law

require the union to represent all employees in the bargaining unit, even those who are not members of the union. Federal and state law prohibits discrimination against employees who have resigned from the union. The NLRB has even rejected attempts by unions to impose fees for using the grievance process on employees who have stopped paying dues.

According to the latest US Department of Labor statistics, in 2016, there were 46,000 Michigan employees working in union shops who are not union members. This means that it is quite possible that if you are a unionized employer you may receive notice that an employee has resigned from the union and wants the dues obligation to stop. If this happens, make sure to read the dues checkoff form signed by the employee to determine your next step.

About the Author. Donald H. Scharg *has more than 30 years of experience in the areas of labor law, construction labor law, employment discrimination, and employee relations. He has represented employers in collective bargaining contract arbitrations, 312 arbitrations, wrongful discharge, and discrimination claims. Don has conducted many seminars for management on employment discrimination, sexual harassment, wrongful discharge, family leave, and other topics. He also regularly contributes articles to professional and business publications regarding employment law issues.*

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