STATE OF MICHIGAN
IN THE SUPREME COURT

IN THE MATTER OF:

TECHNICAL, PROFESSIONAL AND OFFICEWORKERS ASSOCIATION OF MICHIGAN,

Appellant/Respondent,

v.

DANIEL LEE RENNER,

Appellee/Charging Party.

Supreme Court
Docket No.
COA Case No. 351991
MERC Case No. CU 18 J-034

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APPLICATION FOR LEAVE TO APPEAL BY THE TECHNICAL, PROFESSIONAL AND OFFICEWORKERS ASSOCIATION OF MICHIGAN, AFFILIATE OF THE POLICE OFFICERS ASSOCIATION OF MICHIGAN

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STATEMENT IDENTIFYING JUDGEMENT APPEALED, DATE OF ENTRY, AND BASIS OF APPELLATE JURISDICTION

This application for leave to appeal arises from an opinion issued by the Michigan Court of Appeals on January 7, 2021, case number 351991. The Court of Appeals affirmed a decision by the Michigan Employment Relations Commission (hereinafter referred to as "MERC"),which issued on December 10, 2019 (App. Doc. E, pp. 7-36).[1] MERC held that the Appellant/Respondent Technical, Professional and Officeworkers Association of Michigan (hereinafter referred to as "TPOAM" or "Union"), affiliate of the Police Officers Association of Michigan (hereinafter referred to as "POAM"), committed an unfair labor practice in violation of section 10 of the Public Employment Relations Act (hereinafter referred to as "PERA"), 1947 PA 336, as amended, being MCL 423.201, et seq.

On or about December 23, 2019, TPOAM filed a claim of appeal from the MERC decision, pursuant to authority expressly granted by section 16(e) of PERA, MCL 423.216(e). (App. Doc. B, pp. 2-3). MERC decisions are also reviewable as authorized by Michigan Const 1963, art. 6, §28.

Pursuant to MCR 7.303 (B) (1), the Michigan Supreme Court exercises discretionary authority to review decisions of the Court of Appeals, upon application for leave to appeal satisfying the grounds established in MCR 7.305 (B).

[1] A copy of the Court of Appeals Appendix is submitted as an entire exhibit attachment to this application for leave to appeal. References to the transcript, pleadings, decisions, documents, and case exhibits are designated in the attachment by order of document lettering and consecutive page sequence.

STATEMENT OF QUESTIONS PRESENTED FOR REVIEW

I. WHETHER THE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF MERC THAT THE UNION'S INTERNAL PAY FOR SERVICES PROCEDURE IS DISCRIMINATORY AND A BREACH OF THE DUTY OF FAIR REPRESENTATION, BECAUSE PERA ALLOWS AN INTERNAL PAY FOR SERVICES PROCEDURE THAT DOES NOT MANDATE A NONMEMBER BE TERMINATED FROM EMPLOYMENT FOR REFUSING TO PAY FOR REQUESTED DIRECT REPRESENTATION SERVICES?

Appellant/Respondent TPOAM answers the question "yes."

The Court of Appeals and MERC would answer the question "no."

The Appellee/Charging Party would answer the question "no."

II. WHETHER THE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF MERC, WHICH FAILED TO RECOGNIZE THE IMPACT OF THE UNITED STATES SUPREME COURT DECISION IN *JANUS*, AS WELL AS RELYING ON JUDICIAL AND ADMINISTRATIVE DECISIONS WHICH PRECEDED THE *JANUS* DECLARATION THAT A UNION MAY REQUIRE A NONMEMBER TO PAY FOR SERVICES OR BE DENIED REPRESENTATION ALTOGETHER?

Appellant/Respondent TPOAM answers the question "yes."

The Court of Appeals and MERC would answer the question "no."

The Appellee/Charging Party would answer the question "no."

III. **WHETHER THE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF MERC, WHICH DENIED THE UNION'S CONSTITUTIONAL RIGHT TO REFUSE TO ASSOCIATE WITH NONMEMBERS THAT REQUEST DIRECT REPRESENTATION SERVICES, BUT REFUSE TO PAY FOR THOSE SERVICES, AS MERC FAILED TO RECOGNIZE THE UNION IS SUBJECTED TO "FORCED INCLUSION," THEREBY BEING DENIED ITS EXPRESSIVE MESSAGE AGAINST INVOLUNTARY SERVITUDE, BY HAVING TO ASSOCIATE WITH NONMEMBERS THAT REFUSE TO PAY A FAIR SHARE FOR REQUESTED DIRECT REPRESENTATION SERVICES?**

Appellant/Respondent TPOAM answers the question "yes."

The Court of Appeals and MERC would answer the question "no."

The Appellee/Charging Party would answer the question "no."

STATEMENT OF MATERIAL PROCEEDINGS AND FACTS

On January 7, 2021, the Michigan Court of Appeals issued a "for publication" opinion affirming the December 10, 2019 decision of MERC, finding the Union, TPOAM, affiliate of the POAM, committed an Unfair Labor Practice (hereinafter referred to as "ULP"), in violation of the Public Employment Relations Act, being 1947 PA 336, as amended, MCL 423.201 et. seq. (hereinafter referred to as "PERA"). Charging Party/Appellee, Daniel Lee Renner (hereinafter referred to as "Charging Party" or "Renner"), filed a ULP charge, on October 2, 2018, claiming TPOAM violated PERA by refusing to process his disciplinary grievance unless he paid the cost of representation. (App. Doc. J., pp. 48-57). Renner, at the time of filing the ULP charge, was an employee of Saginaw County and part of the bargaining unit of employees represented by TPOAM. Prior to filing the ULP charge, Renner, on March 1, 2017, exercised his right under PERA, Section 10(3), MCL 423.210 (3), to opt out of Union membership and, therefore, was not paying any dues to the Union. (App. Doc. F, p. 37).

POAM on behalf of its affiliate Unions, including TPOAM, adopted an internal operating procedure regulating membership related activities, including pay for services. (App. Doc. H, pp. 40-41). In conjunction with the procedure, the Union's General Counsel issued a notice to bargaining unit members explaining the pay for services procedure. (App. Doc. I, pp. 45-47). The procedure mandated that a nonmember that requested direct representation would have to pay for the representation services provided.[2] Charging Party refused to pay for services he

[2] Representation by the Union for members and nonmembers is designated as either "collective representation" or "direct representation." Collective representation involves negotiation of the collective bargaining agreement and class representation in grievances and unfair labor practice proceedings, as well as all other matters that affect the entire bargaining unit. Direct representation pertains to matters affecting only the particular employee, for example, investigatory interviews, grievance processing and arbitration. See: TPOAM Internal Union Procedure, (App. Doc. H, pp. 40-44).

requested, as a result TPOAM, though willing to provide direct representation services upon payment, did not provide further representation. (App. Doc. G, pp. 38-39).

Renner had received a disciplinary written reprimand from the employer on or about September 19, 2018. Initially, Renner filed a grievance under the Employer's non-union process. That action was rejected by the Employer, as Renner was advised he was covered by a collective bargaining agreement grievance procedure. Renner then sought to contest the discipline through the Union, requesting a grievance form from the Union, which was provided to him by the Business Agent for the bargaining unit. Renner was then advised that if he requested Union assistance he would be required to pay a fee for the direct representation services associated with processing of the grievance and any future proceedings. (App. Doc. J, p. 51). In addition, the Union's General Counsel transmitted a notification to Renner explaining that direct labor representation services for an employee within the bargaining unit, who has opted out of Union membership, is allowed, provided the nonmember pays for the direct labor representation services. (App. Doc. G, pp. 32-39). TPOAM also transmitted to Renner a summary document explaining the Union's internal pay for services procedure for requested direct labor representation services. (App. Doc. I, pp. 45-47).

The POAM executive board, on behalf of its affiliate Unions, including TPOAM, adopted a Resolution approving the "Union Operating Procedure: Nonmember Payment for Labor Representation Services," effective July 23, 2018, which expressly delineated the procedure and requirements for payment of direct labor representation services for a nonmember in the event of a request for services. (App. Doc. H, pp. 40-44). The Resolution makes the following declarations:

> Whereas, bargaining unit employees that are dues paying members of the Union are recognized for continued support of the union and their corresponding receipt

> of labor representation services through the dues that are paid, and will be paid, during the period of employment that leads to a regular service retirement; and
>
> Whereas, the Union has determined that it is in the best interest of the labor organization and its dues paying membership to establish an internal operating procedure mandating nonmembers, that are part of the bargaining unit, in fair exchange for the receipt of requested labor representation services, be required to pay the costs, expenses and fees incurred for such services … (App. Doc. H, p. 41).

By adopting the Resolution implementing the Union Operating Procedure, TPOAM, as an affiliate of POAM, took care and caution to recognize that dues paying members, for the duration of their career, pay an amount in dues which represents a fair exchange for those individuals to receive direct representation services, if needed. Nonmembers are not requested to pay any fees for labor representation services that affect all bargaining unit members collectively, i.e., contract negotiations or class action grievances, but, instead, are only being required to pay for direct labor representation services when they make a request for such services.

In response to the ULP charge, the Union filed a motion for summary disposition (App. Doc. L, pp. 3, 11-35, 41-43). Oral argument on the motion was held on November 13, 2018. The Administrative Law Judge issued a Decision and Recommended Order on April 29, 2019 finding the Union committed a ULP (App. Doc. E, pp. 19-36). The Union filed exceptions to the ALJ's Decision and Recommended Order, with MERC. On December 10, 2019, MERC issued its Decision and Order adopting the ALJ's Decision and Recommended Order, holding the Union violated PERA, section 9 and section 10(2)(a), because the Union's internal pay for services procedure unlawfully discriminated against nonmembers, restraining exercise of the section 9 right to refuse to join a labor organization. (App. Doc. E, pp. 7-18). MERC also found

the Union breached the duty of fair representation when the Union refused to process the grievance unless Renner paid a fee for services. (App. Doc. E, pp. 7-18).

MERC also rejected the Union's Federal and State Constitutional right of freedom of association claim, asserting that the Union's duty to equally represent all bargaining unit employees negated the First Amendment argument. (App. Doc. E, pp. 16-17). The Union filed its claim of appeal to the Court of Appeals on December 23, 2019 under section 16(e), MCL 423.216(e) of PERA and Mich. Const 1963, Art. 6, §28 (App. Doc. B, pp. 2-3). On January 7, 2021, the Court of Appeals issued its decision affirming MERC.

STANDARD OF REVIEW AND GROUNDS IN SUPPORT OF APPLICATION FOR LEAVE TO APPEAL

The Michigan Supreme Court, upon leave granted pursuant to MCR 7.305, reviews a Court of Appeals opinion emanating from review of a MERC decision, upon a standard of "clear error." *Grandville Municipal Executive Association v City of Grandville*, 453 Mich 428, 553 NW2d 917, 921 (1996). The interpretation and enforcement of public sector labor law is charged to MERC. *Kent County Deputy Sheriff's Association v Kent County Sheriff*, 238 Mich App 310, 313; 605 NW2d 363 (1999), *aff'd in part* 463 Mich 353; 616 NW2d 677 (2000). The Court of Appeals reviews MERC decisions "pursuant to Const. 1963, Article VI, §28, and MCL 423.216(e)." *Grandville,* 453 Mich at 436. MERC's "findings of fact are conclusive if supported by competent, material and substantial evidence on the record considered as a whole." *Id.* MERC's legal determinations, which violate a constitutional or statutory provision, or are based on a substantial and material error of law, are subject to reversal. *Id.*, citing MCL 24.306(1)(a)(f). As a result, MERC's legal decisions receive lesser deference than its factual

ones, as the Court reviews legal questions *de novo*. *St. Clair County Education Association v St. Clair County Intermediate School District*, 245 Mich App 498, 513; 630 NW2d 909 (2001). MERC's interpretation of the law does not bind the Court, as it cannot conflict with the legislature's intent as expressed in statutory language. *Id.*

The Application for Leave to Appeal to the Supreme Court satisfies the requirements of MCR 7.305 (B), thereby warranting leave be granted. The erroneous decisions of the Court of Appeals and MERC will have a profound and negative impact on the continued existence of public sector labor organizations, which are supported by public policy under Michigan Law. PERA allows an internal Union pay for services procedure. Fundamental fairness is irreparably compromised by allowing "free riders." If members are forced to subsidize nonmember representation, they will suffer discrimination against their interest and protection. The public's interest in maintaining the delicate balance of peaceful labor relations is also compromised by the erroneous Court of Appeals/MERC decisions, which will be discussed further in the analysis of questions presented. PERA, as the preeminent source of guidance to Employers, employees, and Unions in the public sector in Michigan, has been distorted by the declarations of the Court of Appeals/MERC, hence, granting leave to appeal will address legal principles that have major significance to the state's jurisprudence. Because the "for publication" opinion of the Court of Appeals is patently erroneous, material injustice will occur, to not only the labor organization in this matter, but to all public sector labor organizations in this state, unless the Supreme Court accepts leave to address those errors.

ARGUMENT

I. THE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF MERC THAT THE UNION'S INTERNAL PAY FOR SERVICES PROCEDURE IS DISCRIMINATORY AND A BREACH OF THE DUTY OF FAIR REPRESENTATION, BECAUSE PERA ALLOWS AN INTERNAL PAY FOR SERVICES PROCEDURE THAT DOES NOT MANDATE A NONMEMBER BE TERMINATED FROM EMPLOYMENT FOR REFUSING TO PAY FOR REQUESTED DIRECT REPRESENTATION SERVICES

A. Summary of Argument

The Court of Appeals and MERC erred in interpretation of sections 10(2)(a) and (10)(3)(c) of PERA, in relation to the Union's internal pay for services procedure. The Court of Appeals has disregarded what PERA allows, and what PERA does not prohibit, thereby reducing its conclusion to an apparent philosophical opposition to the Union's pay for services procedure.

In finding that the Union discriminated against the nonmember and breached the duty of fair representation, the Court of Appeals and MERC failed to give due recognition to the "case of first impression" under PERA this matter presents. MERC placed total reliance on repeatedly citing general rules from MERC and NLRB decisions that a union owes a duty to represent a member and nonmember equally. That general rule, which is not disputed by the Union, does not address the unique and significant issues in this case of first impression, which involve whether PERA allows, or does not prohibit, requiring a nonmember to pay for direct representation services that the nonmember has requested. Proper application of PERA requires interpretation of the statutory language, as written, to determine what conduct is expressly allowed, as well as what conduct is not prohibited.

Section 10(3)(c) of PERA allows charging of fees for services requested, provided it is not "required as a condition of obtaining or continuing public employment." Likewise, section 10(2)(a) of PERA allows internal Union rules establishing procedures for membership requirements. Those rules are expressly deemed by PERA to not impair section 9 rights pertaining to joining or not joining the Union, hence, the Union's internal pay for services procedure is allowed.

The Court of Appeals and MERC assertion that the Union's internal pay for services procedure adversely impacts on Renner's "terms and conditions of employment," is a misapplication of what "terms and conditions of employment" pertains to under PERA. Those words are only germane to collective bargaining duties between the Union and the Employer, and have no bearing on the section 10(3)(c) reference to "condition of obtaining or continuing public employment," which is solely and exclusively linked to the ongoing employment retention status of an employee in relation to the Employer.

The Court of Appeals concluded that Renner was denied a personal remedy to have his grievance pursued under the collective bargaining agreement, unless he paid for direct representation, thereby constituting a coercive force to deprive Renner of the PERA section 9 right to join or not join a Union. The Court of Appeals makes a quantum leap in logic concluding that if Renner does not have a personal right to have a grievance pursued, without paying for direct representation services, the Union is exerting control over Renner's conditions of continued employment. The analysis of the Court of Appeals does not square with what PERA allows, as well as what PERA does not prohibit. Renner, at all times, possessed a section 11 right under PERA, MCL 423.211, to pursue an independent personal grievance if he chose to not pay for the requested services from the Union. Renner failed to exercise the section 11 right.

There can be no finding that the Union violated PERA if there is no express prohibition of the Union's internal pay for services procedure. Non-dues employees (nonmembers) have the same "mutuality of obligation" as dues-paying employees (members) to pay a fair share for requested direct labor representation services, as both remain part of the "bargaining unit membership," regardless their free choice to pay dues or opt-out of paying dues to the Union.

B. Section 10(3)(c) of PERA allows a Union internal pay for services procedure

PERA was amended by 2012 PA 349, creating a so-called "right to work" prohibition against public employees being required to join a labor Union or pay a service fee (also known as an agency fee), as a condition of employment. The amended law now states in section 10(3)(c) of PERA, MCL 423.210(3)(c) as follows:

> (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:**
>
> ... (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 a bargaining representative. (emphasis supplied) (App. Doc. K, p. 60).

PERA, as amended, therefore, sets forth a prohibition against payment of dues, fees, assessments or other charges or expenses of any kind or amount, only "**as a condition of obtaining or continuing public employment** ..." Analysis of PERA, prior to the 2012 amendment, is important for proper interpretation and application of PERA after the amendment. Prior to the 2012 amendment, section 10(1)(c) of PERA stated, in pertinent part, as follows:

> 10 (1) It shall be unlawful for a public employer or an officer or agent of a public employer ... (c) to discriminate in regard to hire, terms or other conditions of employment in order to encourage or discourage membership in a labor organization: Provided further, that nothing in this act or in any law of this state shall preclude a public employer from making an agreement with an exclusive

> bargaining representative as defined in section 11 **to require as a condition of employment** that all employees in the bargaining unit pay to the exclusive bargaining representative a service fee equivalent to the amount of dues uniformly required of members of the exclusive bargaining representative; ... (emphasis supplied)

The language of PERA, prior to the 2012 amendment, allowed a collective bargaining agreement to include language mandating that a nonmember pay a service fee "as a condition of employment." That requirement resulted in provisions being incorporated into collective bargaining agreements which expressly mandated that the nonmember pay a service fee, otherwise the nonmember would be terminated from employment. As is evident, the phrase "condition of employment," was inextricably tied to a removal from employment for failure to pay the service fee. When section 10 of PERA was amended in 2012, the sections were rewritten and renumbered. The new "right to work" law, in a revised and renumbered section 10(3)(c), prohibited the existence of a service fee "as a condition of obtaining or continuing public employment." That language is emphatic in establishing that the only express prohibition is mandating a payment of fees or other charges, if it is required as a condition of "obtaining or continuing public employment."

The rhetorical question is why has this case of first impression now arisen? The answer is simply that prior to the right to work amendment, there was no issue with requiring a nonmember to pay for direct representation services because of the service fee (agency shop) allowance in the statute. After 2012, speaking only of TPOAM and its affiliate, POAM, no opt-out from membership occurred which raised any question of a nonmember requesting direct representation services. Charging Party, Renner, was one of the first opt outs with a request for direct representation services. It should also be noted that prior to the US Supreme Court decision in *Janus v American Federation of State, County and Municipal Employees, Council*

31, 585 US___; 138 S Ct 2448 (2018) (holding agency shop provisions to be an infringement of First Amendment rights; to be discussed in Argument II herein), section 10(4) of PERA, MCL 423.210(4), continued agency shop/service fee provisions for police and fire bargaining units, hence, the issues creating the case of first impression in this matter were not germane to the principal Union POAM, of which TPOAM is an affiliate, given that POAM represents police bargaining units which were, prior to *Janus*, exempt from the "right to work" amendment.

PERA **allows** charging fees to a nonmember for requested services, **as long as payment of the charged fees is not made a condition of obtaining or continuing public employment.** The Court of Appeals has misinterpreted PERA by accepting MERC's conclusion that the Union's decision to charge a fee to the nonmember, for requested direct representation services, impacts on the employee's "terms and conditions of employment." (App. Doc. E, pp. 12-18). The Court of Appeals then asserted that section 10 (3)(c) does not allow the Union's pay for services procedure because it "directly impact(s) continuing public employment." (Court of Appeals slip op. at p 6). As is evident, the Court of Appeals has morphed MERC's reference to "terms and conditions of employment" into "continuing public employment," as if those are the same or interchangeable terms. The Court has misunderstood what "terms and conditions of employment" means in a labor context under PERA.

The labor reference to "terms and conditions of employment" has nothing to do with a "condition of obtaining or continuing public employment," as used in section 10(3)(c). The language used by MERC, and blindly accepted by the Court of Appeals, is only applicable to the concept of what is a bargaining issue between a Union and a public employer. PERA imposes the duty to bargain under section 15, MCL 423.215, MSA 17.4558 (15), with respect to "wages, hours and other terms and conditions of employment." *Council 25 and Local 893 of AFSCME,*

AFC-CI0 v MERC, 101 Mich App 91; 300 NW 2d 462 (1982). Subjects within the definition of "wages, hours and other terms and condition of employment "are considered mandatory subjects of bargaining. *Detroit Police Officers Association v City of Detroit,* 391 Mich 44; 214 NW 2d 803 (1973). Parties are required to bargain in good faith upon mandatory subjects to the point of impasse prior to the taking of unilateral action. *Council 25,* 300 NW2d at 466

If the linchpin to MERC's conclusion is that the Union's internal pay for services procedure impacts on "terms and conditions of employment," it is asked, what in PERA supports that conclusion? MERC clearly pulls the reference to "terms and conditions of employment" as a standard out of thin air. Section 10(3)(c) is express in its prohibition of charging a fee, but **only** if it is "required as a condition of obtaining or continuing public employment." What section 10(3)(c) states is not remotely the same as what MERC interprets and is, in fact and law, diametrically opposed to MERC's declarations. The only express prohibition under PERA is seeking to force a nonmember out of a job (obtaining or continuing public employment) if they do not pay a fee. Nothing in the Union's internal pay for services procedure yields that result.

> The Union's pay for services procedure states, in relevant part:
>
> Whereas, bargaining unit employees that are dues-paying members of the union are recognized for continued support of the union and their corresponding receipt of labor representation services through the dues that are paid, and will be paid, during the period of employment that leads to a regular service retirement; and
>
> Whereas, the Union has determined that it is in the best interest of the labor organization and its dues paying membership to establish an internal operating procedure mandating nonmembers, that are part of the bargaining unit, in fair exchange for the receipt of requested labor representation services, be required to pay the cost, expenses and fees incurred for such services; ... (App. Doc. H, p. 41).

The Union's internal pay for services procedure does not mandate that a nonmember forfeit obtaining or continuing public employment for refusing to pay for requested services. The public employer controls the primary decision to hire, promote, suspend, or

terminate an employee. The Union may have a role in addressing an employer's action in terminating an employee by seeking redress under a just cause scrutiny standard (where permitted by a CBA), but certainly the Union, by its requirement that a nonmember pay for requested direct representation services, has not crossed the line into having direct control over the nonmember's conditions of obtaining or continuing public employment.

Though not the same factual matter as the present case, it should be noted that MERC in *Michigan Education Association v Robinson*, MERC Case No. CU 16 B-008 at page 10 of the Slip Opinion, found that section 10(3) of PERA **was not violated by the Union where a memorandum of agreement requiring payment of dues or service fees was not imposed as a "condition of continued employment."** That case was decided against the Union on grounds not germane to the present case, given that in the present matter no requirement to pay dues or service fees was imposed on Charging Party. It is still of interest to note the interpretation of section 10(3) of PERA which MERC then stated, which is consistent with the argument of the Union in this matter.

C. Section 10(2)(a) of PERA allows a Union internal pay for services procedure

There is ample authority under PERA allowing a Union internal operating procedure to require payment by a nonmember for requested direct representation services. PERA **allows** charging fees to a nonmember for requested direct representation services, because section 10(2)(a) recognizes that section 9 rights do "...not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership." Section 10(2)(a) states:

> 10(2) A labor organization or its agent 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**. (emphasis supplied). (App. Doc. L, p. 60).

Section 9 rights include, among other rights, protection against coercing an employee to join a Union, as well as freedom from discrimination by the Union in carrying out representation duties. Section 9 rights, however, "do not impair" the authority of a labor organization to prescribe its own internal rules with respect to the acquisition or retention of membership, as granted by section 10(2)(a). The authorization granted under section 10(2)(a) of PERA is precisely what the Union availed itself of [in addition to section 10(3)(c)], in creating the internal pay for services procedure. (App. Doc. H, pp. 40-44). The exception in section 10(2)(a), has been disregarded by the Court of Appeals and MERC.

The right to establish an internal procedure, governing aspects of acquisition and retention of membership, which the Union's procedure addresses in the context of delivery of collective and direct representation services to the member and nonmember in this mater, renders it immaterial that a section 9 assertion of the right to refrain from joining a Union has been claimed.

There is absolutely no basis to assert that the nonmember was restrained in his right to join or refrain from joining the Union. At all times Renner retained the freedom of choice to decide whether to join in Union membership. The Court of Appeals and MERC have failed to recognize the distinction, which undercuts an assertion that discrimination exists. The freedom of choice at all times was retained by the nonmember to join the Union and defray the costs of representation through dues, or not join the Union, but pay for the costs of requested direct representation. That is a balance of opportunity, mutuality of obligation, and free choice, not

discrimination. That is the epitome of fairness, not discrimination, in the treatment between dues paying members of the Union and nonmembers. In fact, nonmembers receive preferential treatment, as they do not have to share in the cost of "collective" representation matters, such as collective bargaining, class action grievances, and class action unfair labor practice proceedings and other related matters.

The Court of Appeals and MERC incorrectly concluded that the Union's internal pay for services procedure does not constitute the Union's "own rules with respect to the acquisition and retention of membership." [referring to PERA section 10(2)(a)]. The Court's rationale, as that of MERC, is that the Union procedure only concerns paying for services, not acquiring, or retaining membership. The Court's analysis fails to comprehend the totality of the Union's internal procedure. The entirety of the procedure governs the relationship of all "bargaining unit members," which includes both dues paying employees (referred to as "members") and non-dues employees (referred to as "nonmembers"). Nonmembers remain members of the bargaining unit even if they choose not to be dues paying members of the Union. The internal procedure, therefore, addresses aspects of "bargaining unit membership" by describing that members pay for services through dues and that nonmembers who seek direct representation services, must pay a fair share for services, which is a fundamental aspect of what membership in the bargaining unit entails.

The Court of Appeals interpretation of section 10(2)(a) negates the significance of the language pertaining to internal Union rules and reflects a misunderstanding of what a public sector Union is, and what it does for a bargaining unit. "Membership," in the context of section 10(2)(a), must be fairly read as including all possible matters touching upon "membership" in the

bargaining unit. A proper understanding should have recognized that the following matters addressed in the internal procedure satisfy section 10(2)(a) of PERA:

- Membership in the bargaining unit.
- Joining the Union through payment of dues.
- Not joining the Union, but remaining part of the bargaining unit.
- Receiving direct representation services upon payment of the fair share of the cost, hence, a mutuality of obligation for all bargaining unit members.
- When and how representation services are delivered to the member and nonmember.
- Payment for services through dues or fees charged for requested services applicable to all bargaining unit members, including dues paying employees and opt-out employees, also known as nonmembers.

The internal rules established by a Union can be as basic as by-laws or as complex as a Union internal operating procedure governing pay for direct representation services. The POAM/TPOAM internal operating procedure governs the full spectrum of the relationship between the Union and bargaining unit employees. The "Union Operating Procedure: Nonmember Payment for Labor Representation Services," as adopted July 23, 2018, contains a resolution by the POAM executive board on behalf of its affiliate member Unions, as well as the operating procedure itself. (App. Doc. E, pp 40-44). As indicated in the resolution, the Union's labor representation services for all bargaining unit members, including dues paying members and nonmembers, falls under categories of direct labor representation services or collective labor representation services. All bargaining unit members receive collective representation services.

The internal Union matters addressed in the resolution and the operating procedure fall squarely within the context of section 10(2)(a) of PERA.

The Court of Appeals referenced *Scofield v National Labor Relations Board, 594 US 423; 89 S Ct* 1154; 22 L Ed 2d 508 (2008), asserting that a Union rule which "invades or frustrates an overriding policy of labor laws" cannot be enforced. The Court of Appeals also referenced *In Re McLeod USA Telecom Services, Inc.,* 277 Mich App 602; 751 NW2d 508 (2008), for the proposition that "statutory language should be construed reasonably, keeping in mind the purpose of the Act." The Court of Appeals then cited *Saginaw Education Association v Eady-Miskiewicz,* 519 Mich App 422; 902 NW2d 1 (2017), for the proposition that a Union rule limiting the right to resignation from a Union is a violation of the "obvious intent" of the right to work amendment. (Court of Appeals slip op. at pp 5-6). Contrary to the Court of Appeals reliance on those decisions, none of the cases cited support the ultimate conclusion that the Union's pay for services procedure in this matter is a rule that "frustrates an overriding policy of labor laws" or violates the "obvious intent" of PERA when the Act is "construed reasonably."

Proper reading of the *Scofield* decision paints a far different picture than claimed by the Court of Appeals. *Scofield* involved an unfair labor practice charge by employees because the Union imposed fines for violating a Union rule pertaining to production ceilings. The NLRB found that enforcement of the rule did not violate the National Labor Relations Act (NLRA). The Court of Appeals upheld the NLRB, and the Supreme Court affirmed the Court of Appeals. The Supreme Court emphasized that under the NLRA (just as with PERA) an internal Union rule is not deemed to impair the section 8 right (section 9 under PERA) against an employee being coerced in the exercise of rights. *Scofield* 394 US at 428. The Supreme Court concluded that

the only prohibition on an internal Union rule is if it "affects a member's employment status." *Id* at 428.

The Supreme Court referenced the principle that "if the rule invades or frustrates an overriding policy of the labor laws, the rule may not be enforced." *Id* at 429. The Supreme Court, however, concluded that the principle is not applicable unless the action of the Union is "contrary to the plain policy of the Act." *Id* at 430. To that end, the Supreme Court stated that where the internal Union rule involves a legitimate Union interest, does not violate an "imbedded" policy under the NLRA, and allows the Union member to be "free to leave the Union and escape the rule," there is no violation of the Act. *Id* at 430.

The Supreme Court further concluded that the internal rule was not in violation of the NLRA because the fines were not unreasonable, the fines were not imposed through "fiat of a Union leader," the employees' membership in the Union was not involuntary, and there was no violence or employer discrimination. *Id* at 430-431. The Court recognized that the internal Union rule was imposed under threat of expulsion or judicial action, but concluded, ".... the acceptable manner in which the rule was enforced, vindicating a legitimate Union interest, it is impossible to say that it contravened any policy of the Act." *Id* at 436.

The *Scofield* decision, upon full and proper review, does not support the Court of Appeals assertions regarding the Union's internal pay for services procedure. To the contrary, *Scofield* validates the pay for services procedure as an internal rule which addresses legitimate Union interests and does not contravene a "plain," "imbedded" or "overriding" policy of PERA. Likewise, reasonable consideration of PERA does not support a conclusion that the internal pay for services procedure violates the Act, especially given the language of sections 10(3)(c) and 10(2)(a) of PERA.

The Court of Appeals reference to the MERC decision in *Saginaw* also misses the mark, given the "obvious intent" of PERA is that the "right to work" amendment creates an express prohibition against compelled membership, whereas there is nothing comparable in PERA which expressly prohibits an internal pay for service procedure. In *Saginaw*, MERC held that an internal union policy violated the "obvious intent" of the right to work amendment, by limiting resignation from the Union to a one-month period each year. The Court of Appeals and MERC concluded that the Union's pay for services procedure in the present matter, even if constituting an internal rule governing acquisition or retention of membership, can still be deemed impermissible, if it otherwise violates section 9 rights under PERA. The reliance on *Saginaw* is misplaced for obvious reason. *Saginaw* pertains to a section 10(2)(a) violation because the internal policy in limiting the right to terminate Union membership conflicted with the express language of the right to work amendment. In the present matter, there is no express provision of PERA prohibiting nonmember payment for direct services. To utilize the general recitation of section 9 rights, without existence of an express violation, does not render *Saginaw* as controlling, especially when the conclusion as to a section 9 violation is built on a fictional analysis. To further illustrate the point, an aspect of the MERC cited decision in *Amalgamated Transit Union Local 26*, 30 MPER 22 (2016) is of significance. While the *Amalgamated* decision is not directly applicable to the case on appeal, because it dealt with an argument over MERC's jurisdiction to hear a matter involving whether a collective bargaining agreement could exceed three years, MERC did make the following pronouncement which is germane to the present matter:

> **The Commission has long recognized that it does not have jurisdiction to enforce union by-laws and constitutions per se.** *City of Battle Creek*, 1974 MERC Lab Op 698 (no exceptions); *Wayne County Road Commission*, 1974 MERC Lab Op 6 (no exceptions). On remand to the Administrative Law Judge,

> it was held that the union's internal by-laws did not violate charging Party's rights. (emphasis supplied).

In the present matter, MERC and the Court of Appeals should have recognized that absent a provision in PERA expressly stating a pay for services procedure is illegal, when PERA is reasonably construed, there is no "obvious intent" that supports finding the Union's internal pay for services procedure violates PERA.

D. Section 11 under PERA allows an independent personal grievance

To reach the unsupported conclusion that section 10(3)(c) does not allow for the Union's pay for services procedure, the Court of Appeals asserted that focus should not be on section 10(3)(c) but, instead, on section 10(2)(a). According to the Court of Appeals and MERC, if section 9 rights are violated (presumably the right to join or refrain from joining a Union), then a pay for services procedure discriminates against nonmembers by making "it impossible for a nonmember to pursue a grievance unless fees for services are paid." (Court of Appeals slip op. at p 7). The conclusion makes no sense under PERA, as well as the facts of the present case. The Court states that it is "impossible" to pursue a grievance, which is not correct for several reasons. First, if the nonmember pays a fair share for requested services, the Union will represent the employee in a grievance procedure. Second, the nonmember employee, at all times, retains a section 11 right under PERA to pursue as an independent personal grievance. It is the analysis of the section 11 right where the Court of Appeals has gone far afield in its understanding of PERA. The Court of Appeals initially recognized a section 11 right existed under PERA for the nonmember to pursue a personal grievance, but then erred when it perceived that Renner's section 11 right was to no avail because the Employer told Renner the process he used was only

applicable to nonunion employees. (Court of Appeals slip op. at p 8). The Court has missed the point completely by its failure to understand that the Employer had a nonunion grievance review procedure for public employees who are not part of a collective bargaining unit. Renner attempted to use that process before he requested Union assistance. The Employer denied Renner's use of the nonunion procedure, though it could be argued that it erred in violation of section 11 of PERA, by not treating the matter as an independent personal grievance. The Employer's action, as well as that of Renner, has no binding impact on the Union, nor on the mandate of section 11 of PERA.

Pursuant to section 11 of PERA, MCL 423.211, Charging Party possessed the independent personal right to pursue a grievance challenging the reprimand that he received. Section 11 of PERA states, in pertinent part:

> Provided, that any individual employee at any time may present grievances to his employer and have the grievances adjusted, without intervention of the bargaining representative, if the adjustment is not inconsistent with the terms of a collective bargaining contract or agreement then in effect, provided that the bargaining representative has been given the opportunity to be present at such adjustment. (App. Doc. K, p. 62).

Though the Union had no obligation to do so, Charging Party was informed of the section 11 right under PERA. (App. Doc. G, pp. 38-39). The Court of Appeals erred when it concluded that "Renner, therefore, found himself in a position of either paying Respondent for direct representation services under Respondent's pay for services procedure to permit him to pursue the grievance, or refusing to pay and forfeit his contractual right to pursue a grievance under the CBA grievance procedure." (Court of Appeals slip op. at p 8). Renner **possessed a section 11 right, which he did not exercise**. If the Employer denied him that right under PERA, Renner would have had a basis for an unfair labor practice charge against the Employer for violation of section 11, but he did not file any such claim. What is disturbing with the Court of Appeals

opinion is that the court assumes it is "wrong" if Renner must pay for the services he requested. Pursuing grievances by members or nonmembers alike is a costly activity. Members pay for those services with dues, nonmembers are given the option to receive the same services, but they must also still pay a fair share for those services. That is not an act of illegal discrimination or denial of section 9 rights, it is a fundamental fairness issue for all employees within the bargaining unit, be they member or nonmember. To state Renner would not have Union services if he does not pay, is not, nor should it be, a negative assessment of the Union's internal pay for services procedure and the fundamental fairness it seeks to achieve through "mutuality of obligation" in shared responsibility. The logic of the Court of Appeals is to demand that the Union not just represent Renner, not just do it for free, but also incur substantial expenses, for example, arbitration fees and expenses, associated with such representation. PERA does not mandate such a result.

E. The specific amount charged for requested direct representation is not an issue in the proceeding

The Court of Appeals jumps from a fictional analysis of what PERA mandates to a "philosophical" objection that the amount the Union charged for direct representation services is "cost prohibitive," and would force the nonmember to join the Union, thereby constituting a violation of PERA. The Court of Appeals analysis goes far beyond what PERA controls, thereby devolving to an unjustified philosophical objection to a Union charging a fair share to nonmembers that request services. To boldly assert, without support, that a nonmember will be forced to join the Union, is to perpetuate a theory that charging fees for services is somehow evil. Such an analysis also sidesteps the existing section 11 right the nonmember possesses to

continue a personal and independent claim. There is no issue in the unfair labor practice charge objecting to the specific amount assessed to Renner. As such, there was little reason, except for philosophical objection, for the Court of Appeals to focus on a non-issue in the proceeding.

F. There is no violation of PERA where there is no statutory prohibition

The fundamental question must still be asked---where, in PERA, is there express language prohibiting a union from charging fees for requested direct representation services by a nonmember? If PERA, or other law, does not prohibit something, does that mean that it is allowed? YES. *Nulla poena sine lege* is, in essence, conceptually applicable in this case, though a typical criminal law maxim. There is no penalty without a law, or as otherwise known, everything which is not prohibited is allowed, should apply as a matter of fundamental logic in this case.[3]

Where there is no statutory definition of words used in a statute, those words and phrases must be given their plain and ordinary meaning. *Western Michigan University Board of Control v State*, 455 Mich 531, 538-539; 565 NW2d 828 (1997); *Bingham v American Screw Products Company*, 398 Mich 456, 563; 248 NW2d 537 (1976). In this matter, history dictates that reference to "obtaining or continuing public employment" in the section 10(3)(c) prohibition, is linked to the specific act of termination of employment for failing to pay a service fee, as was

[3] As Justice Scalia stated in dissent, in *Rogers v Tennessee*, 532 US 451, 467-468; 121 S Ct 1693, 149 L Ed 2d 697 (2001), "…the maxim *nulla poena sine lege* which "dates from the ancient Greeks" and has been described as one of the most "widely held value-judgments in the entire history of human thoughts." J. Hall, General Principles of Criminal Law 59 (2nd Ed 1960)." Clearly, the matter at hand is not a criminal proceeding, but the logic of the maxim is instructional.

allowed under the statute prior to the right to work amendment. That language, in reverse form now, is identified in the statute in section 10(3)(c), as being prohibited conduct. The only logical conclusion is that the words used specifically relate to a prohibition against the Union charging fees, if required as a condition of obtaining or continuing employment. The internal Union pay for services procedure does not mandate that outcome; therefore, the procedure is allowed by PERA and no ULP can be deemed to have been committed by the Union.

Review of MERC and NLRB cases cited by MERC reveals that the basic general rule repeatedly espoused in those cases does not address nor dispose of the issues in the present matter. The Court of Appeals, for good reason, does not address the inapplicability of those cases. For example, MERC cites *Lansing School District*, 1989 MERC Lab Op 210, for the general rule that the duty of fair representation extends to all employees regardless of their union affiliation. (App. Doc. E, p. 4). That case relied on the U.S. Supreme Court decision in *Steele v Louisville* and *Nashville Railroad Company*, 323 US 192; 65 S Ct 226; 89 L Ed 173 (1944). The *Steele* decision is factually inapposite as it did not deal with a fees-related case, instead, the decision dealt with a refusal under all circumstances, including in collective representation, to represent black firemen, hence, discrimination was found to exist. That factual scenario is not remotely relevant to the circumstances in the present matter, as the Union here provides equal representation to member and nonmember alike in collective representation matters, as well as direct representation matters, because a member pays for the services of direct representation through dues, and likewise, nonmembers are expected to pay a fair share for direct representation services that the nonmember has requested.

Lansing is also inapposite as MERC found in that matter no unfair labor practice was committed by the Union when it demanded termination of a nonmember that refused to pay a

service fee (termination then being allowed under the law prior to the right to work amendment). *Lansing* did recognize, however, that faithfulness to all members must yield to the "common good of the entire membership. That is the first duty." *Lansing*, 1989 MERC Lab Op at 216. In addition, *Lansing* stated:

> ... A union has legal discretion to make judgments concerning the general good of the membership and to proceed on these judgments even though they conflict with the desires or interests of certain employees.

Lansing, 1989 MERC Lab Op at 218.

MERC, as has the Court of Appeals, failed to recognize that the unique factual circumstance in this case of first impression renders insufficient the mere recital of the general rule of a duty to treat members and nonmembers alike. Limitation on the general rule application has been noted in many different factual scenarios. See *National Labor Relations Board v Financial Inst. Employees of America*, 475 US 192, 205; 106 S Ct 1007; 89 L Ed 2d 151 (1986), quoting *NLRB v Allis-Chalmers Mfg. Co.*, 388 US 175, 191; 87 S Ct 2001; 18 L Ed 2d 1123 (1967) (explaining that a Union may "select Union officers and bargaining representatives" without input of nonmembers because "non-Union employees have no voice in the affairs of the Union."); *Branch 6000, National Association of Letter Carriers v National Labor Relations Board,* 595 F2d 808 (D.C. Cir. 1979) ("non-union employees properly may be excluded" from the processes of formulating Union negotiating positions without violating the duty of fair representation); and *Bass v International Brotherhood of Boilermakers,* 630 F2d 1058, 1063 (CA 5 1980) ("internal Union decisions" are "not circumscribed by the constraints of the duty of fair representation"). MERC gives the impression that the general rule is applicable to all circumstances when dealing with member versus nonmember. That is simply an inaccurate

assessment of the law, especially given what PERA allows and does not prohibit, hence the Court of Appeals affirmation of MERC is erroneous.

G. A "mutuality of obligation" is owed by all bargaining unit members, including dues-paying employees and non-dues employees

The Court of Appeals asserted that because the CBA establishes rights for all bargaining unit employees, that the nonmember, who is part of the bargaining unit, has absolute entitlement to the grievance procedure, as does the dues paying member. Consequently, the Court of Appeals concluded that the CBA right is lost to the nonmember if they must pay for Union services, hence, the Union committed a breach of the duty of fair representation by having a pay for services procedure. (Court of Appeals slip op. at 12). The Court of Appeals analysis is again flawed, because a CBA right to the grievance process does not relinquish the bargaining unit member (be they dues-paying employees or non-dues employees) having a "mutuality of obligation." Dues paying members pay through dues, for access to the grievance process. Nonmembers should not have special treatment and be free of obligation to the detriment of the entire bargaining unit. The Court of Appeals also failed to understand that access to the grievance process of the CBA is not restricted if the nonmember, like the dues paying member, must pay for services. The access is present, the nonmember simply must exercise free will to pay for Union representation or not. If the nonmember refuses to pay, the individual retains the section 11 right under PERA to pursue a grievance. At the end of consideration of the section 11 grievance process, the nonmember is at liberty to once again pursue the grievance to arbitration, if it is worthy of arbitration, by utilizing the services of the Union, by paying for the fair share cost of the process, just as the dues paying member pays for the process through dues. That is the

most glaring error in the Court of Appeals decision, the failure to recognize that the CBA, and the rights it establishes are for all bargaining unit employees, does not countenance a nonmember getting access and services for free, when everyone else pays. In addition, just because the CBA establishes a process for grievance processing, does not mean the CBA establishes a mechanism for who pays for the process. That decision is left to the Union's internal rules and procedures. It is without question that a public employer cannot force bargaining over internal Union rules and procedures, including the mechanism for payment for services. Such internal rules and procedures are not mandatory subjects of bargaining under PERA, which is precisely why section 10(2)(a) authorizes the Union's right to create internal rules.

The Union's preeminent duty is to the whole of the membership. As recognized in *Eastern Michigan University v Morgan*, 100 Mich App 219; 298 NW2d 886, 889 (1980), "subordination of the individual employee's rights to the collective interest of the unit is justified by the increased bargaining power which results…" Likewise, in *Detroit Police Lts. And Sgts.*, 1993 MERC Lab Op 729, it was reaffirmed that the union's ultimate duty is toward the membership as a whole, rather than solely to any individual. Those decisions reinforce the Union's argument that the duty to the bargaining unit as a whole includes protection of the financial viability of the bargaining unit. Establishing internal operating procedures which afford direct representation assistance to the nonmember, as requested, is only viable if that representation does not create an unwanted financial burden to the whole of the membership to subsidize the nonmember. That course of action is not discriminatory, to the contrary, it is an act of fidelity to the Union as a whole.

II. THE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF MERC, WHICH FAILED TO RECOGNIZE THE IMPACT OF THE UNITED STATES SUPREME COURT DECISION IN *JANUS*, AS WELL AS RELYING ON JUDICIAL AND ADMINISTRATIVE DECISIONS WHICH PRECEDED THE *JANUS* DECLARATION THAT A UNION MAY REQUIRE A NONMEMBER TO PAY FOR SERVICES OR BE DENIED REPRESENTATION ALTOGETHER

A. Impact of *Janus* on the Union's pay for services procedure

The Court of Appeals misinterpreted the Union's arguments concerning the United States Supreme Court decision in *Janus v American Federation of State, County and Municipal Employees, Council* 31, 585 US ___, 138 S Ct 2448, (2018). The Court of Appeals asserted that it is the Union's position that the *Janus* decision is controlling. (Court of Appeals slip op. at p 3). It is not the Union's position that *Janus* is the controlling legal authority to authorize the Union's pay for services procedure. PERA sections 10(3)(c) and 10(2)(a) allow the pay for services procedure. The significance of *Janus* is the instruction and direction the Court provides, recognizing that it is permissible to require a nonmember pay for requested services, otherwise the member could be "denied union representation altogether." *Janus*, 585 US __, at P17 of slip opinion.

Janus is significant because prior to the decision issuing on January 27, 2018 the majority of bargaining employees in POAM/TPOAM were law enforcement, and therefore exempt from the right to work amendment of PERA. After *Janus*, the exemption was no longer valid, as a result, POAM took steps on behalf of its affiliates, including TPOAM, to adopt internal rules establishing membership criteria requiring fair share pay for requested services. *Janus*, therefore, was the launch for the pay for services procedure, but not the reason the procedure is allowed under Michigan Law. Instead, it is PERA that allows the procedure, contrary to the Court of Appeals misunderstanding of the Union's *Janus* argument. *Janus* overruled the 1977 *Abood v*

Detroit Board of Education, 431 US 209; 95 S Ct 1782; 52 L Ed 2d 261 (1977) decision, which had previously validated a compelled agency shop (service fee) as a condition of continued employment. In the *Abood* decision, the Court concluded that to maintain labor peace and to avoid free-riders, agency shop "service fee" compulsion was legal. The Court in *Janus* declared that *Abood* was "poorly reasoned," and that First Amendment rights supersede the labor peace/free-rider arguments, such that a compelled agency shop fee process is no longer valid. To justify its conclusion, the Court made several declarations emphasizing that the "free-rider" status for nonmembers is not a warranted concern because nonmembers could be required to pay for services or could be denied union representation altogether.

The Court in *Janus* stated:

> … it is now undeniable that "labor peace" can readily be achieved "through means significantly less restrictive of associational freedoms" than the assessment of agency fees. *Janus*, 585 US _____ (2018) at p. 12 of the Slip Opinion.

In addressing the union argument that it would be fundamentally unfair to require unions to provide free representation for nonmembers, the Court stated:

> In any event, **whatever unwanted burden** is imposed by the representation of nonmembers **in disciplinary matters can be eliminated** "through means significantly less restrictive of associational freedoms" than the imposition of agency fees. (Cite omitted**). Individual nonmembers could be required to pay for that service or could be denied union representation altogether**.6 (emphasis supplied). *Janus*, 585 US _____ at p. 17 of Slip Opinion.

In footnote 6, the Court reiterated:

> There is precedent for such arrangements … This more tailored alternative, if applied to other objectors, would prevent free-ridership while imposing a lesser burden on First Amendment rights. *Janus*, 585 US ___ at fn. 6, p. 17 of Slip Opinion.

The above-quoted passages inextricably intertwine the Court's Constitutional law analysis with **instructional guidance** for the future treatment of a Union's duty to a nonmember regarding requested direct representation services and the expense associated therewith. It is overly simplistic to conclude that the *Janus* decision is merely an exercise in First Amendment analysis without impact on the duty of a Union and how nonmember public sector representation is to be provided. Review in the present matter is not to be undertaken in a vacuum, without awareness and application of the tenets of *Janus* to the duty owed by a Union to a nonmember. While the present matter is characterized by MERC as a statutory, not constitutional, inquiry, it cannot be fairly concluded that a Union's duty toward a nonmember under a statutory scheme, such as PERA, has not been impacted by the *Janus* declarations.

To understand the reach of *Janus*, the Court's choice of words and phrases in the above quoted passages must be given fidelity, to discern the significant impact on a Union's duty relative to a nonmember. The proper definition of those words and phrases needs little scrutiny and should be accepted without debate. *Merriam-Webster Dictionary, 11th Edition*, 2016 is a logical source for the definitions.

When the *Janus* Court used the words and phrases it intended them to have meaning and application. As applied to the present matter, if a Union is forced to provide free, direct representation services to a nonmember, then the cautionary words and phrases used by the Court, "whatever unwanted burden," will be present. "Whatever" clearly means "anything," or "everything." Having to provide representation services without payment is by definition an "unwanted burden." If a Union must subsidize the direct representation costs for a nonmember in direct representation proceedings, whether grievance processing, investigatory interviews, individual consultation, arbitration, or any other direct service, then an unwanted burden will be

imposed on the Union. Likewise, the "unwanted burden" equally impacts upon dues paying members who would be forced to subsidize nonmembers for direct representation services they have requested.

The Supreme Court was exceedingly clear and concise in the choice of the phrase "denied union representation altogether." That phrase emphatically means that if the nonmember does not pay the required fees for direct representation services, the Union will have no duty to provide representation in any matter whatsoever. The word "altogether" is defined as "the entire effect; the whole taken together." There is no room for conjecture, the Court made its pronouncement and direction clear. This is not an exercise in ideological posturing, this is the declaration and direction of the *Janus* Court.

The Court of Appeals like MERC, in clear disregard of the impact of what *Janus* states, as well as what *Janus* does not state, concludes that *Janus* is not relevant. MERC claims that *Janus* was merely "expressing its belief that a state statute could be enacted or modified to address a free-rider concern ..." (App. Doc. E, p. 14). The Court of Appeals, in reliance on an overly broad reading of footnote 6, also claims that the reference to "there is precedent for such arrangements" in the footnote, means that a state statute could exist which would allow for a pay for services procedure, but that absent a statutory enactment, an internal pay for services procedure is invalid. The Court of Appeals has made an overly broad assessment of the *Janus* footnote, thereby exalting its own conclusion over the actual text of the *Janus* opinion, which is exceedingly express and unambiguous. The Court of Appeals, like MERC, has taken a singular example in a footnote and elevated it to an absolute prohibition that an otherwise lawful creation of an internal procedure for nonmembers to fair share and pay for requested services is illegal. It is evident from the decision of MERC, which is accepted by the Court of Appeals, that it

misunderstood the fundamental statement in *Janus* that "nonmembers could be required to pay for that service or could be denied union representation altogether." More important, notwithstanding *Janus*, PERA and does not prohibit the internal pay for services procedure.

MERC asserted that when *Janus* was remanded to the federal circuit court, the lower court clarified that a nonmember does not have to pay "any union fees." (App. Doc. E, p. 15). MERC's analysis of the remand decision is a gross misrepresentation of the Circuit Court's holding. The Circuit Court, on remand, *Janus v AFSCME Council* 31, 942 F3d 352 (CA 7 2019), stated that the U.S. Supreme Court had held that the nonmember did not have to pay any dues **only** in the context of the issue in the Supreme Court case, which was whether a compelled agency shop/service fee, as a condition of continued employment, violated the Constitutional right of free speech. The Supreme Court held that no fees could be charged to the nonmember under that particular situation. The Circuit Court on remand did not state that fees could not be charged if the nonmember requested direct services where, as here, payment of such fees is not a condition of continued employment. In fact, the Circuit Court of Appeals stated in reference to the Supreme Court's *Janus* decision:

> Nor did the court hold that Mr. Janus has an unqualified constitutional right to accept the benefits of union representation without paying.

Janus, 942 F3d at 358. While that statement makes no declaration about a statutory mechanism to authorize a pay for service procedure, at a minimum, the Court rejected any constitutional right to not have to pay for representation services.

MERC asserts that the Union's argument is tantamount to a request that administrative legislating occur to allow the internal pay for services procedure, stating:

> ... we believe Respondent is seeking to change the state's labor relations statute and system, an end at odds with the Supreme Court decision in *Janus*. App. Doc. E, p. 15).

> ... we believe Respondent's argument should properly be made to the Michigan legislature and not in this forum. App. Doc. E, p. 18).

MERC's pontificating fails as it is MERC, not the Union, that is engaged in administrative legislating. MERC, by its erroneous conclusions, is attempting to administratively rewrite PERA, section 10(3)(c), to read that a Union internal pay for services procedure impacts on terms and conditions of employment and is, therefore, a violation of PERA. That is not the wording, nor the historical point of emphasis of section 10(3)(c). MERC's attempt to rewrite the prohibition in section 10(3)(c), has a Union violating PERA even when the Union does not seek (nor could it under current law) termination of the nonmember from employment.

MERC has fundamentally failed to recognize that unless PERA prohibits the Union internal pay for service procedure, tagging the Union with the label of violating the law (ULP) cannot be countenanced. As stated heretofore, if there is no prohibition in the law, there can be no violation found for actions taken. A ULP, therefore, can only be committed if the Union engaged in a prohibited act. MERC's decision, as affirmed by the Court of Appeals, cannot be validated under PERA.

B. Decisions by MERC and the NLRB, which precede *Janus*, are not applicable to the Union's internal pay for services procedure.

The Court of Appeals perceives, like MERC, that prior NLRB decisions, as well as prior MERC decisions, govern this matter. The decisions MERC cites are either irrelevant because they do not address the factual circumstances of the present matter, as they once again merely

cite the general rule of duty that is not in dispute or are simply no longer well-reasoned due to the most current declaration of the Supreme Court in *Janus*.

MERC cites a list of decisions from 1974 to 1998 which recite the general rule that NLRB cases can be relied on to give interpretation to PERA. (App. Doc. E, p. 16). That point is not in dispute. It should likewise not be in dispute that there is ample precedent in cases that recognize the "persuasive" authority of the NLRB decisions is not precedent under PERA. The matter at hand is a case of first impression, for which past NLRB decisions are neither relevant nor persuasive in interpreting PERA. While precedent developed in the federal private sector is "helpful," it is not "controlling." *Detroit Police Officers Association v City of Detroit,* 428 Mich 79, 92, 404 NW2d 595, 601 (1987). In *Hurley Medical Center*, 31 MPER 41 (2018), MERC stated:

> MERC is not bound to follow 'every turn and twist' of NLRB case law. *Northpointe Behavioral Health Care Systems*, 1997 MERC Lab Op 530, 537; *Marquette County Health Department*, 1993 MERC Lab Op 901, 906.

MERC cites several NLRB decisions from 1971 to 2018, all of which preceded *Janus,* for the general rule that it is a violation of law to require union membership for a grievance to be processed. (App. Doc. E, p. 17). That general rule is not at issue in the present matter. MERC simply has not understood that the Union's internal pay for services procedure does not compel membership. To the contrary, it gives total flexibility to the nonmember, who gets the best of both worlds. The nonmember gets to be part of the bargaining unit at no charge, gets to have collective representation in contract negotiation matters, class grievances and class unfair labor practices at no charge, and controls the right to request representation for direct services for a fair share fee, or decline, and process an independent personal grievance without the union, as

allowed by section 11 of PERA, all without jeopardizing the nonmember's continued employment status.

MERC places substantial reliance on the 1976 NLRB decision in *International Association of Machinists and Aerospace Workers, Local 697*, 223 NLRB 832 (1976). (App. Doc. E, p. 17). In *Machinists*, an employee was informed that the Union would not pursue his grievance unless he paid a fee towards the cost of Union representation. The logic in the *Machinists* decision cannot be accepted in light of what PERA allows and does not prohibit, but even more directly because of what *Janus* holds.

Judicial criticism of the *Machinists* case was not admitted to, nor even mentioned by MERC. The Court of Appeals addressed the decision in *Cone v Nevada Service Employees Union/SEIU Local 1107*, 116 Nev 473; 998 P2d 1178 (2000), which rejected *Machinists,* but then misapplied the *Cone* Court's conclusions. In *Cone*, the Court dealt with a challenge by nonmembers requesting judicial review of a collective bargaining agreement provision which recognized the right of the Union to charge nonmembers for fees for representation in appeals, grievances, and hearings. The court concluded that because Nevada has a right to work law, similar to Michigan, that employees were **not being compelled to pay a service fee as a condition of employment** but, instead, only for the receipt of direct labor representation services. That logic is the same as proper application of PERA sections 10(2)(a) and 10(3)(c) in the present matter.

The Court in *Cone* also addressed the claim that charging fees for service to nonmembers would represent discrimination against the nonmembers, because members were not being required to pay the same fees. The Court rejected that claim, emphatically stating:

> We see no discrimination or coercion, however, in requiring non-union members to pay reasonable costs associated with individual grievance representation, and therefore concluded the union did not violate the aforementioned statutes.

Cone, 116 Nevada 473, 479 (2000).

In *Cone,* the Court also stated there exist other jurisdictions in support of the Nevada court's decision:

> There is persuasive authority and a compelling rationale in support of their conclusion. First, several other jurisdictions have held that requiring non-union members to pay costs for union representation was not discriminatory, coercive or restraining. See *Schaffer v Board of Education*, 869 SW2d 163, 166-68 (Mo. Ct. App.); *Opinion of the Justices*, 401 A2d 135, 147 (NE 1979).
>
> Second, like the Supreme Judicial Court of Maine, we are convinced that the exclusive bargaining relationship establishes a **"mutuality of obligation"**: A union has the obligation to represent all employees in the bargaining unit without regard to union membership, and the employee has a corresponding obligation, if permissible under the CBA and required by the union policy, to share in defraying the costs of collective bargaining services from which he or she directly benefits. (emphasis supplied)

Cone, 116 Nevada at 479.

The Nevada Supreme Court in *Cone* analyzed the *Machinists* decision and rejected its application. The Court appropriately recognized that it was not bound by NLRB decisions because the statute under review did not fall within the purview of the NLRB or the National Labor Relations Act. Similarly, PERA does not fall within the purview of the National Labor Relations Act and, notwithstanding the recognized "persuasive" authority an NLRB decision is accorded, the 1976 decision is deficient, not only for the reasons specified by the Nevada Supreme Court, but also due to the Supreme Court decision in *Janus*. As stated by the Nevada Supreme Court regarding the NLRB decision:

> Further, we disagree with this authority because it leads to an inequitable result that we cannot condone, by essentially requiring union members to shoulder the burden of costs associated with non-union members' individual grievance representation.

Cone, 116 Nevada at 480. In addition, at footnote 3 of the decision, the Nevada court specifically cited the 1976 NLRB decision, making the following declaration in disagreement with that holding:

> We recognize that there is authority supporting Appellant's position. See: *International Association of Machinists and Aerospace Workers, Local 697*, 223 NLRB 832, 834 (1976 WL 6871) (1976) (describing the role of a union designated by statute as an "exclusive" bargaining agent). However, we disagree with the National Labor Relations Board's ("NLRB") conclusion that an exclusive bargaining agreement cannot charge nonmembers fees for individual grievance representation."

Cone, 116 Nevada at 480.

The NLRB rationale in the 1976 decision, even without *Janus*, is not well-reasoned, as it completely failed to comprehend what the Supreme Court in Nevada aptly recognized to be the more valid concerns. Discrimination will exist towards bargaining unit employees that are union members, because if the union has a duty to provide direct labor representation services to a nonmember, the costs connected therewith will have to be disproportionately borne by the dues-paying members. That inherent unfairness and discrimination toward union members is what the Nevada, Missouri and Maine courts would not condone. Due to the declarations in *Janus*, the issue is resolved, as there is no duty owed by a union to provide free direct labor representation service for a nonmember.

The decisions from Nevada, Missouri and Maine are consistent with the decision of the United States Supreme Court in *Janus*. MERC, however, totally disregarded the logic and rationale of those State court decisions, opting instead to rely on archaic NLRB proclamations which now ring hollow post-*Janus*. The NLRB proclamations in the string citation of cases by MERC in support of the *Machinists* decision are not viable in interpreting PERA.

The Court of Appeals rejected significance of the decision in *Cone* on the premise that the employee in that case had a right to pursue a grievance matter on his own or pay the union. (Court of Appeals slip op. at 12) Apparently, the Court of Appeals reasoned that if the employee had a contractual right to either pay the Union or pursue a claim on his own, that the requirement to pay for services would be valid. The Court of Appeals understanding of the *Cone* decision is flawed because the availability to either pay the union for services or pursue a claim without the Union is irrelevant to the *Cone* conclusion that a pay for services process is fair, non-discriminatory and a "mutuality of obligation," irrespective of the employee having a do-it-yourself path. In any event, in the present matter, Renner had a private path pursuant to section 11 of PERA to pursue a grievance, which he did not properly assert.

Even the NLRB fraternity had its doubters in the pre-*Janus* era. The most interesting condemnation of the archaic NLRB pre-*Janus* rationale was espoused by NLRB ALJ Arthur J. Amchan, in the 2017 decision in *International Association of Machinists and Aerospace Workers*, 2017 WL 5185518 (N.L.R.B. Div. of Judges), wherein he stated:

> I am bound by Board law even, whereas here the record establishes that the fees and expenses incurred by the arbitrator shall be borne equally by the parties and the Union must assume all expenses associated with the preparation and presentation of its case. (cites omitted). **Thus the Union in this case is obligated to incur significant expenses on behalf of unit members who have not contributed a cent to the operation of the Union.** (emphasis supplied).

Each and every word from the pre-*Janus* NLRB proclamations is eviscerated by *Janus*. It is impossible to find compatibility between the Supreme Court declaration that if there is no payment for services by the nonmember, the representation of the nonmember in a disciplinary matter can be "denied," "altogether," and the archaic NLRB rationale that a fictional act of discrimination and coercion exists if a fee is charged to a nonmember for requested services.

The Supreme Court in *Janus* could have ruled that a nonmember was entitled to representation services without charge consistent with archaic NLRB decisions and administrative agencies that have followed the "persuasive" authority of the NLRB, thereby rejecting significance of the "free rider" argument of labor organizations. But the Court chose to instruct, with emphatic words and phrases, that if a nonmember refuses to pay for requested representation that a labor organization does not have a duty, and the nonmember can be "denied union representation altogether." The Supreme Court's declarations in *Janus* have the effect of rendering the past NLRB declarations as no longer "persuasive" in the public sector.

Just as the *Abood, supra*, decision of the U.S. Supreme Court has been rejected and is no longer to be followed because it was "poorly reasoned" according to the *Janus* Court, likewise the pre-*Janus* administrative decisions of the NLRB no longer deserve legal respect because they too were "poorly reasoned." For the same reasons, the Court of Appeals and MERC in this matter have reached conclusions that are "poorly reasoned."

III. THE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF MERC, WHICH DENIED THE UNION'S CONSTITUTIONAL RIGHT TO REFUSE TO ASSOCIATE WITH NONMEMBERS THAT REQUEST DIRECT REPRESENTATION SERVICES, BUT REFUSE TO PAY FOR THOSE SERVICES, AS MERC FAILED TO RECOGNIZE THE UNION IS BEING SUBJECTED TO "FORCED INCLUSION," THEREBY DENIED ITS EXPRESSIVE MESSAGE AGAINST INVOLUNTARY SERVITUDE, BY HAVING TO ASSOCIATE WITH NONMEMBERS THAT REFUSE TO PAY A FAIR SHARE FOR REQUESTED DIRECT REPRESENTATION SERVICES

MERC misunderstood the Union's freedom of association argument. MERC asserted that the Union was claiming a constitutional right to not have to associate at all with a

nonmember. The Court of Appeals found this conclusion by MERC to be in error stating, "MERC incorrectly treated Respondent's exception as though Respondent sought to avoid association with nonunion members entirely." (Court of Appeals, slip op. at p 12) Unfortunately, the Court of Appeals still rejected the Union's argument by incorrectly concluding that the Union was not being subjected to a "forced inclusion," as well as rejecting the significance of the Union's "expressive message."

It is the position of the Union that it will associate with the nonmember as part of the bargaining unit in all collective labor representation matters, i.e., contract negotiations, class grievances and class unfair labor practice proceedings. Also, the Union will associate with a nonmember that requests direct representation services, provided the nonmember pays for those services, just as members pay for those services through dues. But, to force the Union to associate with a nonmember that requests direct representation services, but refuses to pay for those services, is tantamount to government (under a distorted interpretation of PERA) forcing the Union into involuntary servitude in violation of the Union's Federal and State Constitutional First Amendment right of freedom of association.

The First Amendment to the U.S. Constitution, US Const, Am I, which is made applicable to the states through the 14th Amendment, US Const, Am XIV, establishes the coterminous rights of free speech and association, stating:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or of the right of the people peaceably to assemble, and to petition the government for redress of grievances.

Michigan Const 1963, art 1, §5 states:

> Every person may freely speak, write, express and publish his views on all subjects, being responsible for the abuse of such rights, and no law shall be enacted to restrain or abridge the liberty of speech or of the press.

The Constitutional freedom of speech recognizes "The right to **eschew association** for expressive purposes is likewise protected." (emphasis supplied). *Janus, supra,* 585 US ____, at p.8 of Slip Opinion. "Freedom of association…plainly presupposes a freedom not to associate." *Pacific Gas & Elec. Co v Public Util. Comm'n of Cal,* 475 US 1, 9; 106 S Ct 903; 89 L Ed 2d 1 (1986). The rights to free speech and association under the Federal and Michigan Constitutions are coterminous. *City of Owosso v Pouillon,* 254 Mich App 210; 657 NW2d 538 (2002).

The Constitutional right to freedom of association is applicable to private organizations. *Boy Scouts of America et al. v Dale,* 530 US 640; 120 S Ct 2446; 147 L Ed 2d 554 (2000). In *Roberts v United States Jaycees,* 468 US 609, 622; 104 S Ct 3244; 82 L Ed 2d 462 (1984), the court stated: "Consequently, we have long understood as implicit in the right to engage in activities protected by the First Amendment a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends."

In *Boy Scouts of America,* the Court concluded that the BSA was protected by the First Amendment against compelled association with individuals that affect in a significant way the expressive message or viewpoints of the BSA. *Boy Scouts of America* involved a homosexual Scoutmaster that was expelled from the organization. The decision of the Supreme Court struck down a New Jersey Law mandating public accommodations.

The Court of Appeals found *Boy Scouts of America* inapplicable, based on a conclusion that the Union has not suggested that it will be forced to endorse Renner's beliefs. (Court of Appeals slip op. at pp13-14) In addition, the Court of Appeals concluded that the Unions "expressive message" is not a "message," as the only rationale of the "message" is requiring payment for services. The Court of Appeals is in error in every aspect of its conclusions.

The Union is subjected to a forced inclusion to Renner's belief that he is entitled to free services, and that he should have preferred treatment over other employees who pay for services through their dues. That belief is in opposition to the position and expressive message of the Union. For the Court of Appeals to reject the Union's expressive message, as being no message at all, reveals more about the Court of Appeals philosophical opposition to the Union's pay for services procedure, than it does the law. It is absolutely the expressive message of the Union to philosophically and financially have fair sharing on behalf of all employees of the bargaining unit that it represents. That is a message, substantive in nature, not merely procedural. As the Supreme Court in *Roberts* recognized, "economic" ends are a basis upon which rights of association are recognized. The Court of Appeals declaration rings hollow and attempts to create a distinction without significance. To demand the Union work for free runs counter to not only the Union's philosophy and message, but it also runs counter to the fundamental tenet that all people generally accept, that no one, nor any entity, should be forced into involuntary servitude.

Merely because the Union states it will embrace the nonmember, thereby associating with that person, if they pay for direct representation services, does not lessen the significance of the Union's refusal to endorse and accept the nonmember's belief that he is entitled to free services to the detriment, both financially and philosophically, of those members that pay dues. The Court of Appeals "rubber stamp" of MERC, and its overly excessive attempt to substitute its philosophical position in place of what PERA allows, reveals that the Union is being subjected to a forced inclusion and being denied its expressive message.

The Court in *Boy Scouts of America* recognized that when government makes "intrusion into the internal structure of affairs of an association," such as a governmental regulation forcing a group to accept certain individuals as members, that an unconstitutional burden upon the

freedom of association will exist. Just as the nonmember has a protected First Amendment right to join or not join the union, even though still being connected to it as part of the bargaining unit, the Union has at least an equal right to determine its level of association with a nonmember, where the expressive message and viewpoint of the Union and its membership is to prohibit "free-riders," and only associate with a nonmember upon fair share payment for labor representation services the nonmember requests. This is especially the case where the Union's expressive message and viewpoint on association with the nonmember does not impinge on the nonmember's employment rights, given there is no collective bargaining agreement mandate requiring payment for services requested as a "condition of obtaining or continuing employment," nor is there any conduct by the Union seeking to force the public employer to take adverse employment action against the nonmember as a consequence of the refusal to pay for services requested.

MERC relied on the 9th Circuit decision in *Mentele v Inslee*, 916 F3d 783 (CA 9 2019). (App. Doc. E, p. 16). The court in *Mentele* discussed whether the status of the exclusive bargaining representative, under state law, impinged on the First Amendment right of a nonmember. The nonmember had challenged the legality of the Union's status as an exclusive bargaining representative on the premise that it impinged on the nonmember's First Amendment free speech right. As is evident, *Mentele* is not remotely applicable to the claim by the Union in this matter that its Federal and State Constitutional right of association is impinged if the law, PERA, is applied in such a manner that it forces the Union to provide services requested by the nonmember for free. Of interest, the court in *Mentele* discussed an "exacting scrutiny" test to determine if the impingement on First Amendment associational rights is permissible. The Court of Appeals did not discuss the significance of *Mentele.* The court in *Mentele* stated:

> ... the impingement of First Amendment rights must, at a minimum, satisfy "exacting scrutiny,"; i.e., it must "serve a compelling state interest that cannot be achieved through means significantly less restrictive of associational freedoms." *Janus*, 138 S Ct at 2465 [quoting *Knox v Service Employees International Union, Local 1000*, 567 U.S. 298, 310, 132 S Ct 2277, 183 L Ed 2d 281 (2012)]. Exacting scrutiny encompasses a balancing test.

Mentele, 916 F3d at 790. Applying the balancing test of exacting scrutiny to the associational rights of the Union, reflects that impingement on the Union's Constitutional right does not "serve a compelling state interest" under PERA. Forcing the Union to associate and provide free services that are requested by the nonmembers is tantamount to government compelled involuntary servitude, which is neither a compelling state interest nor compatible with declarations in *Janus*. The nonmember is already given the freedom to choose to be a member or not. The nonmember has the benefit, without payment, to receive collective representation. The nonmember has the benefit to process an individual grievance under section 11 of PERA to seek redress if there is a breach of the collective bargaining agreement. There is no logical or equitable reason for the nonmember to also receive free direct representation services in matters where the nonmember has requested services.

RELIEF REQUESTED

The Court of Appeals opinion is patently erroneous. Under the authority of what PERA allows, the Union created an internal pay for services procedure requiring a nonmember to pay for requested direct services. The Union's internal pay for services procedure does not mandate that the refusal of a nonmember to pay for services that have been requested will adversely impact on the nonmember obtaining or continuing in public employment, hence there can be no violation of PERA. The Union's internal pay for services procedure is valid under section

10(2)(a) as it does not contravene any section 9 rights of the nonmember, as well as not being prohibited under section 10(3)(c) of PERA. In addition, the Court of Appeals and MERC's interpretation of PERA creates an impingement on the Union's Federal and State Constitutional right of freedom of association.

The decision of the Court of Appeals has a profound and negative impact on the continued existence of public sector labor organizations in Michigan. Legal principles under PERA, the governing law of all public sector labor relations issues, is materially impacted by the Court of Appeals decision, hence, this case is of major significance to the jurisprudence of the state.

Based on the aforesaid, Appellant/Respondent TPOAM, affiliate of the POAM, respectfully requests the Michigan Supreme Court grant the application for leave to appeal.

Respectfully Submitted:

POLICE OFFICERS ASSOCIATION OF MICHIGAN

FRANK A. GUIDO (P32023)
General Counsel

Dated: February 11, 2021

STATE OF MICHIGAN
IN THE SUPREME COURT

IN THE MATTER OF:

TECHNICAL, PROFESSIONAL AND OFFICEWORKERS ASSOCIATION OF MICHIGAN,

Appellant/Respondent,

v.

DANIEL LEE RENNER,

Appellee/Charging Party.

Supreme Court
Docket No.
COA Case No. 351991
MERC Case No. CU 18 J-034

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DANIEL LEE RENNER
on behalf of himself
Appellee/Charging Party

PROOF OF SERVICE

Brittany Henry, being first duly sworn, states that if sworn to testify in the above-captioned matter, she would competently state that on the 11th day of February, 2021, she served a copy of the Application for Leave Appeal by the Technical, Professional and Officeworkers Association of Michigan, Affiliate of the Police Officers Association of Michigan, on Daniel Lee

Renner, 815 Grove St., Saginaw MI 48602, the Michigan Employment Relations Commission, 3026 W. Grand Blvd., Ste. 2-750, P.O. Box 02988, Detroit MI 48202-2988 and the Court of Appeals, Cadillac Place, 3020 W. Grand Boulevard, Suite 14-300, Detroit, MI, 48202, by placing same in a sealed envelope, affixing sufficient postage thereon, and depositing in a regular United States mail receptacle in Redford.

Brittany Henry

Brittany Henry

Subscribed and sworn to before me
this 11th day of February 2021

Dawn M. Evanski, Notary Public
State of Michigan, County of Wayne
My Commission Expires: 07/04/2025