

LEGAL MEMORANDUM

TO: PET Members

FROM: Larry L. Crain, J.D.
Office of General Counsel

Introduction

There is widespread confusion among teachers and unions alike concerning a member's rights related to union membership. The purpose of this memorandum is to provide legal guidance regarding union membership, particularly, the right of a member to resign from the union.

I. Union Membership is Voluntary.

Teachers are not required, as a condition of their employment, to join the union and pay full membership dues. Section 7 of the National Labor Relations Act ("NLRA"), 29 U.S.C. § 157 gives employees "the right to self-organization, to form, join, or assist labor organizations" but also provides them with "the right to refrain from any or all of such activities." Additionally, Tennessee has in force its own Right to Work law which secures the right of employees to decide for themselves whether or not to join or financially support a union. *See* Tenn. Code Ann. §§ 50-1-201 through 204. *See e.g.* Tenn. Atty. Gen. Opinions dated 7-30-79 and 6-14-79, W.L. 79-289, referencing the Education Professional Negotiations Act (T.C.A. § 49-55-06), stating that "professional employees shall also have the right to refrain from any or all such [union] activities." Thus, under controlling Supreme Court precedent and Tennessee law, courts have held: "Equally clear is an individual's right of choice not to associate himself with a particular organization or ideology." *Fort Wane Educ. Ass'n. v. Goetz*, 443 N.E.2d 364, 368 (1982) (citing *Abood v. Detroit Bd. of Educ.*, 431 U.S. 207, 238 (1977)).

In addition to federal and state laws, the Constitution also provides a safeguard against an employee's deprivation of their right to freedom of association. Teachers have the right to contract with a professional association of their choice and a union contract cannot infringe upon that right. *See Roberts v. United States Jaycees*, 468 U.S. 609, 623 (1984) (Infringements on freedom of association "may be justified by regulations adopted to serve compelling state interests, unrelated to suppression of ideas, that cannot be achieved through means significantly less restrictive of associational freedoms"); *Elrod v. Burns*, 427 U.S. 347, 363 (1976) (government means must be "least restrictive of freedom of belief and association"); *Kusper v. Pontikes*, 414 U.S. 51, 58-59 (1973) ("[Even] when pursuing a legitimate interest, a State may not choose means that unnecessarily restrict constitutionally protected liberty").

Similarly, in *Adkins v. Board of Educ. of Magoffin County*, 982 F.2d 952 (6th Cir. 1993), the Sixth Circuit held that a school board employee could not be prohibited from

exercising her First Amendment right to freedom of association with others who disagreed with policies of the superintendent of county school system. The Court's reasoning would apply with equal force to any attempt by a school board to impose disciplinary restraints on a teacher for contacting or associating with a professional association because the teacher did not agree with certain positions espoused by the local bargaining unit or the school board.

II. Union Members Have a Right to Resign from a Union At Any Time.

Regardless of whether a teacher joins the union voluntarily or due to coercion of union representatives or other members of the union, a teacher has an unqualified right, under both state and federal law, to resign membership in a union at any time. The same federal and state laws in force to protect an employee's right to join a member also protect the right to resign as a member. Section 7 of the NLRA provides that an employee has "the right to refrain from any or all . . . activities . . ." of a union. 29 U.S.C. § 157 (1982). This general right is implemented by another provision of the act which prohibits unions from committing unfair labor practices, including restraining or coercing employees in the exercise of their rights." 29 U.S.C. § 158(b)(1)(A). *See e.g.*, Tenn. Code Ann. §§50-1-201 through 204.

Similarly, labor cases have recognized Section 7 of the NLRA as a "guarantee" of the union employee's right to resign at any time. *See Boilermakers v. Boilermakers Local D129*, 910 F.2d 1056, 1060 (2d Cir. 1990).

In fact, unions cannot place limitations on the rights of its members to resign. *See Pattern Makers League v. NLRB*, 473 U.S. 95, 106-07 (1985) (holding that unions cannot restrict employees' right to resign from membership in the union). *See e.g.*, *Abood*, 431 U.S. 207. For example, in *International Union v. NLRB*, 865 F.2d 791 (6th Cir. 1989), employees resigned from their union during a strike so they could cross the picket line and return to work. The union argued that the employees could not resign if there were charges pending against them for their misconduct. The Court rejected the union's reasoning and held the union's policy of limiting when and how the members could resign as unconstitutional and violative of the National Labor Relations Act. *See e.g.*, *NLRB v. Local 73, Sheet Metal Workers' Int'l Ass'n*, 840 F.2d 501 (7th Cir. 1988) (requiring the union to eliminate a provision in its constitution limited a member's right to resign).

Likewise, in *Chauffeurs, Teamsters, Warehousement & Helpers Union, Local No. 377 v. NLRB*, 2004 NLRB LEXIS 57 (NLRB 2004) a union refused to honor a member's resignation and argued that until the union member first paid the Union for back dues, the member did not have the right to resign. The court held the union's actions to be unlawful stating that "**it is well-settled that employees have an absolute right to resign their membership in a union, and that any restrictions placed by a union on its members right to do so, including an unnecessary delay in processing the resignation request, is unlawful.**" *Id.* at *38 (citing *Pattern Makers League*, 473 U.S. 95).

Further, a union member cannot be disciplined for resigning from the union. The Supreme Court in *NLRB v. Granite State Joint Board* held:

[T]he power of the union over the members is certainly no greater than the union-member contract. Where a member lawfully resigns from a union and thereafter engages in conduct which the union rule proscribes, the union commits an unfair labor practice when it seeks enforcement of fines for that conduct. That is to say, when there is a lawful dissolution of a union-member relation, the union has no more control over the former member than it has over the man in the street.

409 U.S. 213, 217 (1972).

Thus, “if a union official tells a member that he is not free to resign, this is a false statement and the union should thereafter lose its power to discipline that employee for actions taken after that false statement, because employees are not required to undertake gestures which the union tells them will be futile. . .” Rossie D. Alston, and Glenn M. Taubman, *Union Discipline and Employee Rights*, <http://www.nrtw.org/RDA.htm> (last visited Nov. 8, 2007).

Attempts by union officials to interfere with or discipline members for resigning from the union may result in penalties against the employer. In *Laborers Northern California District Council v NLRB*, 275 N.L.R.B. 278 (1985), the court concluded that when a union attempts to discipline an employee for resigning, the employee should be awarded the costs in defending those charges against the union. *See also Sheet Metal Workers Local 104 (Lux Metals, Inc.) v. NLRB*, 322 NLRB No. 158 (1997); *Debont v. City of Poway*, 158 L.R.R.M (BNA) 2754 (S.D. Cal. 1998) (holding that a public employee who resigned his union membership and revoked his dues check off authorization is entitled to a preliminary injunction against further deductions or any other actions to enforce a collective-bargaining agreement’s requirement that membership and dues deductions may be discontinued only at the expiration of the agreement.) The Court in *Debont* also held that there is a possibility of irreparable harm, because the employee’s “First Amendment rights are at issue and may be unconstitutionally infringed” by that requirement; and because the employee’s “First Amendment rights are implicated by the payroll deduction . . . the balance of hardship on that tips sharply in [the employee’s] favor.” 158 L.R.R.M. (BNA) at 2757-59.

III. How to Effectively Resign from a Union.

While many courts disagree on the manner sufficient for an employee to resign from a union, a written request by the member has consistently been held to be sufficient to withdraw a membership. For example, the National Labor Relations Board has held that the mere cancellation of a dues deduction authorization, alone, does not constitute sufficient notice of resignation, but the cancellation of dues deduction, along with a

signed writing by the member stating the member's desire to resign is sufficient resignation from a union. *See NLRB v. Teamsters Local 439*, 837 F.2d 888, 890 (9th Cir. 1988) (“[A] union member’s resignation [is] **effective upon its receipt by the union.**”) The National Right to Work foundation also suggests that documentation of sending the written resignation is the “safest and most effective course for an employee.” Alston & Taubman, *Union Discipline and Employee Rights*, <http://www.nrtw.org/RDA.htm> (last visited Nov. 8, 2007).

Please see the following document for a written form of resignation which will effectively withdraw your membership from the union.

To:
Personnel Director for (insert name of School System)

**DELIVERED VIA FAX
ORIGINAL MAILED**

Re: NOTICE OF WITHDRAWAL FROM (insert name of local union)

Please consider this as my formal notification that I have this day resigned my membership in the (insert name of local union). You are directed to cease and discontinue any payroll deduction of membership dues to this organization in the future.

Thank you for your prompt attention to this request. Please contact me if you anticipate any difficulty in complying with this request.

Very truly,