

IN THE CHANCERY COURT FOR THE TWENTIETH JUDICIAL DISTRICT OF
TENNESSEE

FILED
2007 JAN 12 PM 3:24
RICHARD R. ROOKER, CLERK
D.C.

KRISTY CARR,)
)
 Plaintiff,)
)
 v.)
)
 METROPOLITAN NASHVILLE)
 EDUCATION ASSOCIATION, INC.,)
 and METROPOLITAN NASHVILLE)
 PUBLIC SCHOOLS,)
)
 Defendants.)

Case No. 07-98-711

FILED
2007 JAN 16 AM 9:41
CLERK OF COURT
CHANCERY COURT
TWENTIETH JUDICIAL DISTRICT
NASHVILLE, TENNESSEE

COMPLAINT

COMES NOW THE PLAINTIFF, KRISTY CARR and sues the Defendants,
METROPOLITAN NASHVILLE EDUCATION ASSOCIATION, INC., and
METROPOLITAN NASHVILLE PUBLIC SCHOOLS and would state as follows:

I.

Introduction

1. The Plaintiff is a teacher employed by the METROPOLITAN NASHVILLE PUBLIC SCHOOLS ("MNPS") and is also a member of the METROPOLITAN NASHVILLE EDUCATION ASSOCIATION, INC. ("Union"). She brings this action seeking declaratory judgment against the Defendants for refusing to allow her to voluntarily resign from the Union in



MJC.

derogation of their statutory rights under Tennessee's Right To Work statute, codified at Tenn. Code Ann. § 50-1-201, *et seq.*, and provisions of the Tennessee Teacher Tenure Act, codified at T. C. A. § 49-5-609, as well as her right to freedom of speech and assembly under the Tennessee Constitution. In addition Plaintiff seeks a judgment for any past dues involuntarily deducted by the School Board and paid to the Union after the effective date of her tendered resignation from the Union.

II.

Parties

2. KRISTY CARR is a professional employee within the meaning of Tenn. Code Ann. § 49-5-602 (11) of the Education Professional Negotiations Act ("Negotiations Act"). She is employed as a teacher by MNPS. She is a resident of Davidson County, Tennessee.

3. The Defendant Metropolitan Nashville Education Association ("The Union") is a professional employees organization within the meaning of Tenn. Code Ann. § 49-5-602 (12) of the Negotiations Act. The Union is the exclusive bargaining "representative" within the meaning of Tenn. Code Ann. § 49-5-602 (13) and § 49-5-606 of the Negotiations Act for the Plaintiff and the other non-management professional employees in the employ of MNPS. The Union maintains an office within this county. Its agent for service of process is Dr. Jamye Merritt, 531 Fairground Court, Nashville, TN 37211.

4. The Metropolitan Nashville Public Schools ("MNPS") is a local body politic organized and existing under the laws of the State of Tennessee. Its agent for service of process

is Karl Dean, Director of Metro Department of Law, 204 Metro Courthouse, Nashville, TN 37201.

III.

Facts

5. In September of 2006, Kristy Carr decided to resign her membership in the Union.

6. On or about October 23, 2006, Ms. Carr wrote to the Union and to the MNPS notifying them via certified mail of her resignation from the Union. (A true and correct copy of this letter is attached hereto as Exhibit A and is incorporated herein by reference.)

7. On November 8, 2006, Jamye Merritt, President of the MNEA, replied to Ms. Carr. Ms. Merritt informed Ms. Carr that her request to terminate her membership in the Union was denied because only requests received during an arbitrary window of time between April 1 and May 31 could be approved. Instead of granting her request, the MNEA forced Ms. Carr to remain a member of the Union, and continued to deduct union dues from her salary over her objection. (A true and correct copy of this letter is attached hereto as Exhibit B and is incorporated herein by reference.)

8. When the School Board refused to honor the Plaintiff's requests that it cease any further dues deductions to the MNEA, she contacted legal counsel to investigate this situation.

9. On or about November 9, 2006, Larry L. Crain, Esq. sent a letter via certified mail to Dr. Jamye Merritt on behalf of the Plaintiff, Kristy Carr. A true and correct copy of this letter is attached hereto as Exhibit C and incorporated herein by reference.

10. In a further attempt to communicate with the Union regarding Ms. Carr's resignation, Plaintiff's counsel sent via fax transmission to Jamye Merritt on November 8, 2006 the same letter identified previously as Exhibit C. A true and correct copy of the fax transmission receipt is attached hereto as Exhibit D and is incorporated herein by reference.

11. On November 20, 2006, this letter was returned with the hand-written notation "REFUSED" on the envelope. A true and correct copy of this envelope and the printout from the Post Office's website documenting the refusal are attached hereto as Exhibit E and are incorporated herein by reference.

12. As of the date of this Complaint there has been no response or acknowledgment from the Union concerning this memorandum sent by Plaintiff's counsel. Despite the Plaintiff's repeated demands that the Union and MNPS honor her resignation, the Defendants continue to deduct union dues from her salary and force her to remain a member of the MNEA against her will.

IV.

Causes of Action

Count I

Violation of Right To Work Statute

13. Plaintiff incorporates by reference herein the allegations contained in ¶¶ 1-12, and does further allege and aver as follows:

14. The actions of the Defendants in failing or refusing to process the Plaintiff's written request for termination of membership in the Union, and to cease further payroll

deductions for dues constitutes a violation of Tennessee's Right to Work law codified at Tenn. Code Ann. § 50-1-201, *et seq.*

15. As a result of the Defendants' actions in refusing to acknowledge the Plaintiff's resignation from the Union, the Defendants have forced her to remain as involuntary members in the Union against her stated will.

Count II

Tennessee Constitution (Declaration of Rights, Article I, § 23 - Free Assembly and Petition)

16. The allegations of paragraphs 1-15 are incorporated herein by reference.

17. The actions of the Defendants constitute a violation of the Plaintiff's constitutional right to free assembly and free petition guaranteed under Article I, § 23 of the Constitution of the State of Tennessee.

Count III

Statutory Violations: T.C.A. §§ 49-5-603 and 49-5-609

18. The allegations of paragraphs 1-17 are incorporated herein by reference.

19. In addition, Plaintiff enjoys a statutory right under Tenn. Code Ann. § 49-5-603 to refrain from membership in a collective bargaining unit.

T.C.A. § 49-5-603 Professional employees; rights.

Professional employees have the right to self-organization, to form, join or be assisted by organizations, to negotiate through representatives of their own choosing, and to engage in other concerted activities for the purpose of professional negotiations or other mutual aid or protection; provided,

that professional employees **also have the right to refrain from any or all such activities.**

Tenn. Code Ann. § 49-5-609 further provides:

(a) It is unlawful for a board of education or its designated representative to:

(1) Impose or threaten to impose reprisals on professional employees, or discriminate against professional employees by reason of their exercise of rights guaranteed by this part;

(2) Interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in § 49-5-603;

(5) Encourage or discourage membership in any organization by discrimination in hiring, granting of tenure, or other terms or conditions of employment; provided, that the board of education or its designated representative may express any views, arguments or opinions on the subject of employer-employee relations; provided, that such expression contains no threat of reprimand, discharge, or promise of benefits;

20. By coercing the Plaintiff to remain a member of the Union and deduct dues from her salary despite her clearly stated desire to terminate her association with the MNEA the Defendants have conspired to interfere with the Plaintiff's exercise of the rights guaranteed in § 49-5-603.

PRAAYER FOR RELIEF

1. Wherefore, Plaintiff KRISTY CARR requests the following relief:
 - a. Monetary: That this Court require the union to return to her, with interest, any dues deducted from her salary at the Board after the effective date of her notice of resignation from the Union;
 - b. Declaratory: That this Court enter a declaratory judgment that any artificial window of time established by the Union as the exclusive period when members may resign their membership in the Union is unconstitutional under the Tennessee Constitution;
 - c. Other: That the Court grant the Plaintiff such other and further legal or equitable relief as the Court may deem just and proper.

Respectfully submitted,

BRENTWOOD LAW OFFICES, P.L.L.C.

By: 

Larry L. Crain, Esq.
5214 Maryland Way
Suite 402
Brentwood, TN. 37027
(615) 376-2600
Attorney for Plaintiff

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 RICHARD B. ROOKE, CLERK
 D.C.

October 25, 2006

Attention: Payroll Department

To: Payroll Officer, Metro-Nashville Board of Education

From: Kristy L. Carr, Teacher, Haywood Elementary School

Effective immediately: No longer make any deductions from my salary for the Metro-Nashville Education Association, the Tennessee Education Association, or the National Education Association. The associations mentioned have been notified that I am no longer a member of these organizations and that I will expect reimbursement for any further charges. My employee number is 502248, and I can be reached at (615) 293-4594.

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 RECEIVED
 METRO-NASHVILLE BOARD OF EDUCATION
 HUMAN RESOURCES DEPARTMENT



 Signature

10-25-06

 Date

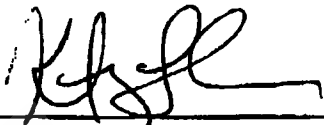
There is an unbroken line of federal case law which governs the right of an employee to voluntarily resign from a union at any time. To be meaningful, the right to abstain from collective activity in a labor union necessarily implies the right to terminate the membership at will. A teacher's freedom to resign their membership in MNEA, TEA, NEA, or any local teacher's union cannot be tied to any artificial window or deadline. See Roberts v. United States Jaycees, 468 U.S. 609, 623 (1984). The unfettered right to resign union membership at will is well recognized both under federal and Tennessee law. See Tenn. Atty. Gen. Opinions dated either 7-30-79 or 6-14-79, W.L. 79-289, referencing T.C.A. Section 49-5506 (Education Professional Negotiations Act) stating that "professional employees shall also have the right to refrain from any or all such [union] activities."

Notice of Union Membership Resignation

To: President Janye Merritt, Metro Nashville Education Association

From: Kristy L. Carr, Teacher, Haywood Elementary School

I hereby resign from the Metro Nashville Education Association, Tennessee Education Association, and National Education Association. Make no more requests from the Metro-Nashville Board of Education for payments of dues to these organizations. Any funds deducted from my salary for union dues after receipt of this notice will be reimbursed to me immediately, or legal action will be taken. I can be reached at (615) 333-5118.

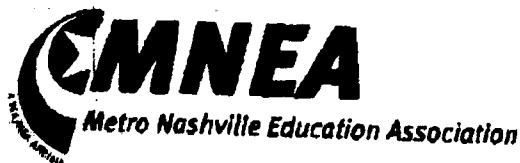


Kristy L. Carr

10-25-06

Date

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RICHARD R. BOOKER, CLERK

November 8, 2006 D.C.

Kristy L. Carr
Haywood Elementary School
Route 1

Dear Kristy,

This letter is to acknowledge your request to be taken off the continuing membership plan for MNEA-TBA-NEA. Your request was received after the May 31st deadline for canceling continuing membership for the coming year as established in the MNEA Bylaws. As President of the Association, it is my responsibility to uphold the Bylaws.

ARTICLE IV - DUES (Section 2)

"Cancellation of continuing member dues must be submitted in writing between April 1 and May 31 for the following year".

This cancellation deadline notice was published in the SLATE several times last spring and mailed to you in your 'continuing member' packet at the beginning of the school year. If you wish to discontinue membership for the 2007-2008 school year, you will need to send written notice to the MNEA office between April 1, 2007 and May 31, 2007.

If I can help you in any way, please contact me. Thank you for your support.

Sincerely,

Jamye Merritt
President

JM/jh

Dues were deducted after receipt of resignation on Nov. 3 and Nov. 17.

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HAYWOOD ELEMENTARY
CLERK

nashville post.com

LARRY L. CRAIN
Attorney at Law



LAW OFFICES
of
BRENTWOOD

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615.545.6009 Fax
lcrain@brentwoodlaw.com
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RICHARD R. ROONEY, CLERK

2007 JAN 12 PM 3:24

D.C.

November 8, 2006

Dr. Jamye Merritt
MNEA
531 Fairground Court
Nashville, TN 37211

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED
AND VIA FACSIMILE: 615-726-2501

RE: Kristy Carr

Dear Dr. Merritt:

This firm has been retained to represent Kristy Carr, a teacher at Haywood Elementary School. Ms. Carr mailed to you and to the payroll office a notice resigning membership in the MNEA. She has the return receipt from the post office showing these items were accepted at your office and the payroll office on or around October 25, 2006.

In the past, some teachers in the Metro School System have encountered difficulties in getting the MNEA to acknowledge their resignation from the union. I have written to you on previous occasions to reiterate the unqualified right of a teacher to resign from the MNEA. As you are aware, your office has repeatedly refused to accept our mail. In order to avoid any such confusion with regard to Ms. Carr, I am herewith making demand that MNEA forward to my office within 5 days of the date of this letter an acknowledgment that Ms. Carr's resignation has been accepted and that she is no longer on the rolls of the MNEA. If I fail to receive this acknowledgment, we are prepared to proceed with the filing of an action in the Chancery Court of Davidson County, Tennessee, to enforce her constitutional and statutory rights and remedies. This lawsuit will be filed on **November 20, 2006**, if no response is received prior to that time. I remain

Very Truly,

Larry L. Crain
Larry L. Crain

LLC:cgs

cc: Metro Public Schools
Payroll Department
222 Third Avenue North
Nashville, TN 37203

Kristy Carr
1005 Waverly Ave.
Nashville, TN 37203

Fax: 291-6068 5214 Maryland Way, Suite 402 • Brentwood, TN 37027

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