

MEMO TO: Members of Professional Educators of Tennessee

FROM: Larry L. Crain, Esq.
General Counsel

RE: Withdrawal of Membership In Unions and Professional Associations

DATE: June 19, 2003

Several of our members have contacted our office recently to inquire about the legal rights afforded teachers to withdraw from a professional association or teacher's union. This legal memorandum addresses this specific issue and is offered to guide you in exercising your constitutional and statutorily protected right to withdraw membership in any such organization.

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. The United States Supreme Court recognized this principle in Pattern Makers League v. NLRB, 473 U.S. 95, 104-106 (1985), and Abood v. Detroit Bd. of Educ., 431 U.S. 207 (1977). Under both controlling Supreme Court precedent and Tennessee statute, courts have held that: "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, quoting from Abood v. Detroit Bd. of Educ., 431 U.S. 207, 238, 97 S.Ct. at 1798 (1977).

A teacher's freedom to resign their membership in TEA and 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) (Infringements on freedom of association "may be justified by regulations adopted to serve compelling state interests, unrelated to the 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"); NAACP v. Button, 371 U.S. 415, 438 (1963) ("Precision of regulation must be the touchstone" in the First Amendment context).

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."

In addition, T.C.A. § 50-1-201, *et seq.* makes it unlawful to discriminate or discipline an employee on the basis of their non-membership in a labor organization.

I trust this letter answers any questions you may have with respect to your ability to withdraw from a local union. To further assist you in this regard I have enclosed herewith a form which may be adapted to your locale and used to notify the local educational agency and union of your desire to exercise this protected right.

Sincerely,

Larry L. Crain
General Counsel,
Professional Educators of Tennessee