

**State of Michigan  
CIVIL SERVICE COMMISSION  
Public Meeting  
December 19, 2007**

Present: Bryan J. Waldman, Chairman  
Andrew P. Abood, Commissioner  
Sherry L. McMillan, Commissioner  
Thomas M. Wardrop, Commissioner  
James D. Farrell, State Personnel Director

**1. CALL TO ORDER**

The meeting of the Civil Service Commission was opened by Chairman Bryan J. Waldman at 1:42 p.m. in Conference Room A, Lower Level, Capitol Commons Center, 400 S. Pine Street, Lansing, Michigan.

**a. Approval of Minutes**

Chairman Bryan Waldman requested a motion to approve the minutes of the September 28, 2007 meeting. On motion duly made and supported, the Commission approved the minutes of the September 28, 2007, meeting.

**b. Commissioner Tribute – F. Thomas Lewand**

On motion duly made and supported, the Commission adopted the following Tribute:

Whereas, F. Thomas Lewand has served with distinction as a member of the Michigan Civil Service Commission for over four years, most recently serving as its Chairman, and

Whereas, Mr. Lewand has gained the respect and admiration of his colleagues by demonstrating dedication and commitment to the affairs of the Commission, and

Whereas, Mr. Lewand's expertise in corporate law provided the Commission with keen insight in resolving complex business matters and,

Whereas, Mr. Lewand routinely shared with the Commission the invaluable knowledge of state government he gained while serving as the Chief of Staff for Governor James Blanchard and,

Whereas, Mr. Lewand's ethical standards were beyond reproach when potential conflicts of interest arose involving Commission business and,

Whereas, the Commission has appreciated Mr. Lewand's ability to consider opposing viewpoints and render decisions in the best interest of the State, to

clearly articulate his position, and to laugh under stressful circumstances, be it therefore

Resolved, that the citizens of the State of Michigan, the Michigan Civil Service Commission, and staff, express to Mr. Lewand their deepest appreciation for his dedicated efforts and many accomplishments during his years of service to the Commission, and be it further

Resolved, that the Michigan Civil Service Commission does hereby extend to Mr. Lewand its most sincere thanks, its highest esteem, and best wishes for health and happiness for many years to come.

**c. Retirement Resolution – Dale Johnston**

On motion duly made and supported, the Commission adopted the following Resolution:

Whereas, Dale Johnston has decided to retire from state government after over 34 years of service, and

Whereas, Dale has demonstrated commitment and dedication throughout his career as a public servant, gaining the respect and admiration of his colleagues, and

Whereas, Dale performed a variety of professional analyst and supervisory duties over the years, including conducting compensation studies and annual salary surveys for the Compensation Hearings Panel, before taking a promotion to head the State's Suggestion Award Program in 1988 where he served for over ten years, and

Whereas, Dale will always be remembered for his enthusiastic leadership and promotion of the State's Suggestions Awards Program receiving numerous awards including the 1997 Statistical Awards from the Employee Involvement Association and the 1989 and 1991 Group Winner Awards from the National Association of Suggestion Systems, and

Whereas, Dale will now be able to spend more time with his wife, Mary Jo, their daughter and son-in-law, Traci and Dwayne, and precious grandchildren, Hailey and Logan, and

Whereas, Dale and Mary Jo can now spend more time participating in Civil War re-enactments, portraying the parts of Reverend and Mrs. Johnston, as they travel to several states to join Musters, or gatherings of soldiers, be it therefore

Resolved, that the Michigan Civil Service Commission does hereby extend to Dale Johnston its heartfelt appreciation for his dedicated efforts and many accomplishments during his years of service.

Resolved, that the Commission extends to Dale its warmest wishes for much health and happiness throughout his retirement.

## 2. AMENDMENTS TO AGENDA

There were no amendments to the agenda.

## 3. INFORMATIONAL REPORTS

- a. **Director's Report:** The Commission received the following report from State Personnel Director James D. Farrell.

### **Unclassified Position Report**

Since the last report, the following approvals were processed.

#### Department of Attorney General

The Department of Attorney General submitted the following requests to establish unclassified positions:

1. A request dated August 28, 2007, to serve as the Communications Advisor. Concurrently, the position of Administrative Assistant to the Attorney General was abolished. The request was approved effective August 30, 2007.
2. A request dated September 18, 2007, to serve as the Constituent Relations Analyst. Concurrently, the vacant Chief Deputy Attorney General position was abolished. The request was approved effective September 17, 2007.
3. A request dated October 15, 2007, to serve as the Special Assistant for Legislative Affairs. Concurrently, the Communications Advisor position was abolished. The request was approved effective October 15, 2007.

#### Department of Corrections

The Department of Corrections submitted a notice that they were abolishing an unclassified Deputy Director position, effective December 10, 2007.

#### Department of Human Services

The Department of Human Services submitted a request dated September 11, 2007, to establish an unclassified position of Chief Deputy Director. This position paralleled our existing unclassified position of Chief Deputy Director which allowed a transition period for the new incoming Chief Deputy Director. Upon completion of the transition period, one Chief Deputy Director position was abolished. The request was approved effective September 24, 2007.

#### Department of Natural Resources

The Department of Natural Resources submitted a request dated October 9, 2007, to establish an unclassified position of Chief of the Office of Legal Services. The request was approved effective October 7, 2007.

## **Regulations**

### 5.07, Performance-Pay Programs (Effective October 1, 2007)

Standard C.8 of Regulation 5.07 prohibits performance-pay increases to be awarded or approved during FY 07-08. The ending date of this prohibition was extended from the previous September 30, 2007 ending date, to September 30, 2008.

## **Letter of Understanding - AFSCME**

### Approval of Extracurricular Premium Pay (Effective September 17, 2007)

At the request of the Office of State Employer (OSE), dated September 13, 2007, and as authorized in a letter of understanding in the AFSCME collective bargaining agreement, I approved the compensation rates for extracurricular program services for six positions at the Michigan Schools for the Deaf and Blind.

## **5. NEW BUSINESS**

### **a. Civil Service Financial Reports**

Ms. Carol Vargovich, Director, Budget & Financial Services Division, summarized the financial activity for the Civil Service Commission, which included a summary of FY 2007, certification of payroll of the classified state service, and the proposed budget for FY 2008. Ms. Vargovich further stated that the Civil Service Commission is currently working with the Office of State Budget for the FY 2009 budget due in part to the consolidation of human resources operations into the Civil Service Commission. The proposed FY 2009 budget will be brought before the Commission at a later date.

Ms. Vargovich requested Commission approval of the following two resolutions:

#### **1. Certification of Payroll - Fiscal Year 2007 – Resolution 5a**

The Civil Service Commission, in fulfillment of the Constitutional requirement to certify the aggregate payroll of the classified service for the preceding fiscal year, certified a payroll of \$4,453,362,885, as recorded in the State's Michigan Administrative Information Network as of November 21, 2007, for the fiscal period October 1, 2006, to September 30, 2007.

#### **2. Budget Resolution – FY 2007-2008 – Resolution 5b**

Consistent with the Civil Service Commission's constitutional authority, and recognizing the funding requirements for employee economics and CSS&M reductions, the Commission decreased the previously approved FY 07-08 budget for the Civil Service Commission by \$715,800.

On motion duly made and supported, the Commission approved Resolutions 5a and 5b.

**b. Collective Bargaining Agreements**

**1. UAW**

**2. SEIU**

**a. Scientific & Engineering Unit**

**b. Technical Unit**

**c. Human Services Support Unit**

General Counsel D. Daniel McLellan addressed the Commission regarding the Collective Bargaining Agreements (CBAs) and approvals reached for three year terms for the UAW International Union and its Local 6000, Michigan Public Employees, SEIU Local 517-M (Scientific & Engineering Unit, Technical Unit, and Human Services Support Unit). General Counsel McLellan stated that staff reviewed CBAs for potential prohibited subjects of bargaining and found no violations.

On motion duly made and supported, the Commission approved Resolutions 5.b-1, 5b-2a, 5b-2b, and 5b-2c.

**c. Impasse Panel Recommendation**

**1. AFSCME Council 25**

**2. MCO Local 526-M**

**3. MSEA**

Assistant General Counsel John Gnodtke addressed the Commission regarding the Impasse Hearing held by members of the Employment Relations Board and the parties (OSE and AFSCME Council 25, MCO Local 526-M, and MSEA) where agreement on designated issues could not be reached. The Panel consolidated three issues that were common to multiple bargaining units: wages, health insurance, and overtime calculation. The Panel's recommendation consisted of raises of 0%, 1%, and 3% for the next three fiscal years and new pay premiums for asbestos abatement work and Corrections Transportation Officers. The Panel recommended cost-sharing shifts in health insurance, with the employee premium share going up 5%, co-pays for drugs and office visits rising, deductibles increasing, and other changes. The Panel also recommended that hours on sick leave not be counted as time worked when calculating eligibility for overtime.

Assistant General Counsel Gnodtke stated the recommendations match the tentative agreements previously reached by the units at impasse, the Coordinated Compensation Panel's recommendations for nonexclusively represented employees, and the voluntary agreements ratified by other bargaining units.

The panel also addressed additional non-economic matters for each of the three units as follows: 1) recommended current language on work location definitions for AFSCME. OSE had sought to redefine neighboring facilities as a single work location, 2) OSE requested to streamline nine pages of overtime equalization and mandating procedures, while MCO had sought to add new provisions, and 3) the panel recommended current language on temporary layoffs for MSEA, extending for three years a letter of understanding pledging to not reduce hours.

The panel also recommended that a paragraph from the AFSCME contract, which indicated the premium share to be paid for health insurance, was inconsistent with the State Employees' Retirement Act and should be struck from the contract.

Assistant General Counsel Gnodtke presented IP2007-01, Institutional Unit, IP2007-02, Security Unit, and IP2007-03, Labor and Trades and Safety & Regulatory Units for approval.

Office of the State Employer Director, M. Scott Bowen and Deputy Director Tom Hall addressed the Commission on the impasse recommendations, requesting two changes that were bargained in good faith at the bargaining table and to which both parties had agreed. Mr. Hall requested approval of a letter of understanding for a pilot program for Corrections facilities in the Jackson area, which expands the definition of work locations for purposes of assignment and transfer on a pilot basis. This letter of understanding was submitted previously as part of the tentative agreement rejected in the ratification vote.

Mr. Hall also requested that the new language which was agreed to with MSEA at original negotiations related to Article 12, layoff and recall, temporary layoffs, be the language approved by the Commission.

Mr. John Loose, with the law firm Fraser, Trebilcock, Davis and Dunlap representing Michigan State Employees Association (MSEA), addressed the Commission in support of adoption of the Impasse Panel's recommendation.

Mr. Roberto Mosqueda, President, Michigan State Employees Association (MSEA), addressed the Commission in support of the adoption of the Impasse Panel's recommendation.

Mr. Mel Grieshaber, Executive Director, Michigan Corrections Organization (MCO-SEIU), spoke to the Commission regarding the sick leave time being calculated as overtime compensation. He stated that it was not equitable treatment between their unit and other units. He indicated Department of Corrections employees are required to work overtime and that it is not voluntary like in other units. He stated it's disparate treatment to Corrections Officer's pay, and asked the Commission to overturn the recommendation of the Impasse Panel and return the current language in the MCO collective bargaining agreement that has existed for the last 25 years, whereby sick leave time is considered in the calculation of overtime.

The Commission moved to consider motion 5c-1, IP2007-01, AFSCME (Institutional Unit). Commissioner Abood moved to amend and approve the tentative agreement to the Letter of Understanding regarding Article 20 – work location pilot program in the Jackson area. Commissioner McMillan seconded and the motion passed.

The Commission moved to consider motion 5c-2, IP2007-02 MCO (Security Unit). With regard to MCOs request to amend IP2007-02, Article 17, dealing with the calculation of overtime and sick leave time language to remain in the CBA, Commissioner Abood motioned for approval of IP2007-02. Commissioner McMillan seconded the motion. The motion to approve the Impasse Panel's recommendation passed.

The Commission moved to consider motion 5c-3, IP2007-03, MSEA (Labor & Trades Unit & Safety & Regulatory Unit). Commissioner Abood moved to amend the motion in regards to the tentative agreement, Article 12, regarding temporary layoffs and replace

the existing recommendation of the Impasse Panel with the Article 12 text that was previously agreed upon. Commissioner McMillan seconded and the motion passed.

**d. Coordinated Compensation Panel Recommendations – FY 2009**

Mr. Matthew Fedorchuk, Director, Compensation Division, presented the recommendations contained in the proposed Coordinated Compensation Proposal (CCP) for FY '09 that was developed by the members of the Employment Relations Board, serving as the CCP Panel under Civil Service Rule 5-1.3.

The Panel recommended Commission approval of the following for FY '09.

- No across-the-board general wage increase during fiscal year 2009.
- An increase in the out-of-state premium for Department of Treasury Auditors to 20% of base salary.
- Change the Employer's share of the State Health Plan PPO premium to 90%.
- Change the Employer's share of HMO premiums to 95% up to the amount paid for the same coverage code under the State Health Plan PPO.
- Add a \$50 co-pay for State Health Plan PPO members for emergency room visits if the employee is not admitted.
- Increase the State Health Plan PPO co-pay for office visits from \$10 to \$15.
- Increase State Health Plan PPO drug plan co-pays to \$10 for generic, \$20 for preferred brand, and \$40 for non-preferred brand. The mail order program will have co-pays of \$20 for generic, \$40 for preferred, and \$80 for non-preferred.
- The State Health Plan PPO drug plan will include the clinical programs of Generics Preferred, Step Therapy, and Drug Quantity Management.
- Renewal of the Professional Development Fund for MSC employees at \$150,000 and renewal of the Professional Development Fund for B&A unit employees at \$50,000.
- Effective January 1, 2009, increase the State Health Plan in-network deductible to \$300 individual/\$600 family, and increase the out-of network deductible to \$600 individual/\$1200 family.

On motion duly made and supported, the Commission approved Agenda Item 5d.

**e. Unclassified Pay Recommendations – FY 2009**

Mr. Fedorchuk presented staff's proposal for the annual Unclassified Pay Recommendation required under Article XI, Section 5 of the Michigan Constitution.

A survey of department director salaries in large states was conducted by staff, and information on Michigan county official and university president salaries was compiled. The salary levels of Michigan elected officials and classified deputy department directors was also reported.

Based on a review of the data, staff requested Commission approval and transmission of the following recommendations to the Governor and the Legislature for FY '09.

- No merit salary increase for FY 2009.

On motion duly made and supported, the Commission approved Agenda Item 5e.

**f. Memorandum of Understanding between the Michigan Civil Service Commission and the Michigan Department of Management and Budget regarding Retiree Health Benefits**

General Counsel McLellan presented information on the Memorandum of Understanding between the Michigan Civil Service Commission and the Michigan Department of Management and Budget regarding the proposal to move the State Health Plan PPO for all medicare-eligible retirees administered by Blue Cross and Blue Shield of Michigan (BCBSM) to the Medicare Advantage plan administered by BCBSM. The MOU would not apply to persons retiring from the State Police enlisted unit on or after October 1, 1987.

On a motion duly made and supported, the motion passed. Commissioner Thomas M. Wardrop abstained from the vote.

**g. Rule 5-4, Additional Compensation, Overtime, etc.**

General Counsel McLellan presented information regarding amendment to Rule 5-4, Additional Compensation, Overtime, etc. to exclude sick leave time as a basis for calculating overtime for non-exclusively represented employees.

On a motion duly made and supported, the motion passed.

**h. Rule 6-3.6, Rules of General Applicability**

General Counsel McLellan provided information regarding two proposals staff prepared in response to the request from State Employer, M. Scott Bowen, to repeal Rule 6-3.6, Rules of General Applicability. Proposal one that staff provided was to limit the use of the Rules of General Applicability to emergency circumstances; eliminate the 14-day prior written notice requirement; and require the Commission to approve unanimously both the rule of general applicability and a separate resolution that articulates the commission's reasons for enacting the rule and confirms that the rule takes effect immediately for exclusively-represented employees. Proposal two provided by staff was to repeal Rule 6-3.6 in its entirety.

Office of the State Employer, M. Scott Bowen addressed the Commission on the subject matter asking for the repeal of Rule 6-3.6 and provided a brief history on the Rules of General Applicability. He indicated that the effect of this provision is detrimental to the bargaining process and to date the rules of general applicability have not been invoked and even when not invoked it inhibits the trust to bargain in good faith and for these reasons, he asked that the rule be repealed in its entirety.

Commissioner Abood motioned to approve 5-h, Proposal 2, to repeal Rule 6-3.6, Rules of General Applicability. Commissioner Wardrop seconded the motion. Commissioner McMillan opposed. The motion passed.

#### **i. Contributions to Political Action Committees (PACs)**

General Counsel McLellan addressed the Commission regarding the request from the Office of the State Employer (OSE) to amend its rules to permit the collective bargaining parties to negotiate payroll deduction for employee political contributions to union PACs. General Counsel McLellan stated if approved, it would only authorize the bargaining units permission contained in the rules, which authorizes the parties to negotiate and submit to the Commission for approval, provisions of the collective bargaining agreements regarding PACs.

M. Scott Bowen, Director of the Office of State Employer, addressed the Commission on the request for the adoption of proposed Rule 6-16, Payroll Deduction for Separate Segregated Funds, and to establish procedures for separate voluntary payroll deductions for legally established funds by the employee and their representative. Mr. Bowen indicated two issues need to be addressed: 1) whether to allow voluntary payroll deductions for PACs and 2) whether it is legally permissible to do so. Mr. Bowen indicated that under the current Collective Bargaining Agreement with the UAW and Letter of Understanding, the State Employer agreed to commence negotiations on the subject of PACs in the event the Civil Service Commission's policy is amended. He further stated the constitutional and plenary authority the Commission has over employee relations allows the Commission to consider this request. Further, Mr. Bowen indicated that a recent court decision (*Michigan Education Association v Land*) and a legal opinion provided by outside counsel to the Commission should legally permit the payroll deduction of PACs.

Commissioner McMillan questioned whether any provisions have been negotiated for allowing the payroll deductions of the PACs and reiterated that this is only an opportunity to negotiate. She further questioned whether it was anticipated to allow state employees to solicit PAC dues during actual work time. Mr. Bowen responded that would not take place and would be illegal.

Commissioner McMillan directed questions to State Personnel Director, James D. Farrell, regarding the time and impact on Civil Service staff for the implementation of the payroll deduction for the voluntary PAC. Director Farrell indicated the State Employer would engage in negotiations with the unions and there would be a number of different options to determine the process, and would also include involvement from the Office of Financial Services who administers the payroll process. He further stated until a process is defined through negotiations, it would take some time for staff to determine the resources available and the process to implement.

Commissioner McMillan questioned whether it would be prudent to hold on the matter, given that there are various legal opinions regarding this issue, and considering the Court of Appeals has granted leave to appeal in the *Michigan Education Association v Land* case, rather than have Civil Service Commission staff implement a program that may ultimately be determined that was not appropriate.

Mr. Robert LaBrant, Senior Vice President, Political Affairs and General Counsel, Michigan Chamber of Commerce addressed the Commission in opposition of approving the proposed draft Rule 6-16. Mr. LaBrant highlighted the issues as to his opposition: 1) Attorney General Opinion No. 7187, which is binding on the Civil Service Commission, 2) the first legal opinion of Miller, Canfield, Paddock and Stone dated February 3, 2006, and 3) a pending appeal in *Michigan Education Association v Land*, where a circuit court vacated a Secretary of State Declaratory Ruling that disallowed a public body to administer a payroll deduction program for a union's separate segregated fund. He further stated that the purpose of the Civil Service system was to keep partisan politics out of state classified employment and approval of the proposed rule would re-insert politics into the operations of state government employment. Mr. LaBrant urged the Commission to disapprove the proposed rule. Mr. LaBrant's correspondence dated December 12, 2007, is on file as part of this record.

Commissioner Thomas M. Wardrop stated that a subsequent legal opinion of outside counsel was provided to the Commission which advised the Commission that a violation would not exist if the union PACs paid all costs associated with processing the voluntary contributions.

Chairman Bryan Waldman questioned Mr. LaBrant's opinion on keeping politics out of the Civil Service Commission, and stated the reason the Civil Service Commission was created was to protect state employees from running a spoils system. If a court determined it is legal to allow state employees to contribute to PACs, the Commission has an obligation to move forward.

Mr. Andrew Nickelhoff, an attorney with the law firm of Sachs Waldman, representing the Michigan State AFL-CIO and Change to Win, addressed the Commission in support of adopting the proposed rule. Mr. Nickelhoff stated his opinion of adopting the proposed rule is consistent with the Commission's constitutional plenary authority, and does not inject politics into the classified service. Mr. Nickelhoff's December 11, 2007 correspondence is considered part of this record.

Assistant Attorney General Susan Przekop-Shaw addressed the Commission on behalf of the Attorney General's office. Ms. Przekop-Shaw urged the Commission to table the approval of the proposed rule given the ongoing Court of Appeals case, *Michigan Education Association v Land* and critical constitutional issues implicated by this proposed rule. She indicated that she believed the planning and implementation of this rule would be done during working hours. Ms. Przekop-Shaw reiterated Attorney General Mike Cox's, advice in a December 17, 2007 letter to the Commission, which stated that under the Michigan Campaign Finance Act, Section 57, the Commission is precluded from approving payroll deductions for PAC contributions. She further stated that reimbursement to the State for the expenses involved for administering PACs does not cure the violation under Section 57.

Ms. Przekop-Shaw opined that by adopting this rule, the Commission becomes instrumental in reinserting a political element into the classified service, which places state employees in an insecure position. Members who are represented by unions can choose to check off whether they want a PAC payroll deduction and this would place a label on those employees, as well as those employees who do not want to contribute. The Commission previously adopted Rule 1-12.6, which prohibits on-duty political activity, and Rule 1-12.5, which states the levying, solicitation, collection or payment of

any type of political assessment and the authorizing or ordering of such activity in the classified service are prohibited. Based on these rules, this issue was addressed previously by the Commission.

Ms. Przekop-Shaw stated that the Constitution does grant the Commission plenary authority and in the last 64 years this issue has been given consideration, but the Commission continued to protect state government employees to be sure that political activity does not have a gateway into our State's civil service process. For the reasons stated, the Attorney General advised the Commission to table the proposed rule until the appellate process is concluded and additional legal review is considered based on the outcome of that process, and to also consider the Commission's authority and limitations.

Commissioner Abood reiterated Article 11, Section 5, and the meaning of plenary authority, which grants the Commission ultimate authority to address rules such as this.

Commissioner Abood moved to approve Rule 6-16, Payroll Deduction for Separate Segregated Funds, seconded by Commissioner Wardrop. The motion passed, with Commissioner McMillan opposed.

## **6. PUBLIC COMMENT**

## **7. COMMISSION APPEALS**

In closed session via conference call on November 20, 2007, the Commission considered 14 recommended decisions of the Employment Relations Board. Copies of the review sheets indicating the Commission's actions on these decisions are on file with Civil Service.

## **ADJOURNMENT**

There being no further items for Commission approval or public comments to be heard, Chairman Waldman adjourned the meeting at 4:17 p.m.

**NOTE**

Copies of any written statements, reports, or staff proposals which were presented to the Commission may be obtained by contacting the Civil Service Commission, Executive Office, Capitol Commons Center, 400 S. Pine Street, P.O. Box 30002, Lansing, Michigan, 48909, or by telephone at 517-373-3020.

I, James D. Farrell, State Personnel Director, hereby certify that the foregoing are the Minutes of the Civil Service Commission Meeting of December 19, 2007.

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State Personnel Director

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Date