

**State of Michigan
CIVIL SERVICE COMMISSION
Public Meeting
December 8, 2010**

Present: Thomas M. Wardrop, Interim Chair
Andrew P. Abood, Commissioner
Kelly G. Keenan, Commissioner
Jeremy S. Stephens, State Personnel Director

Absent: Sherry McMillan, Chair

1. CALL TO ORDER

The meeting of the Civil Service Commission was opened by State Personnel Director, Jeremy Stephens, at 10:46 a.m. in Conference Room A, Lower Level, Capitol Commons Center, 400 S. Pine Street, Lansing, Michigan. Director Stephens welcomed new Commissioner Charles Blockett, Jr.

Commissioner Andrew Abood motioned to nominate Commissioner Thomas (Mac) Wardrop as Interim Chair. Commissioner Charles Blockett, Jr. seconded, and the motion passed.

a. Approval of Minutes

Interim Chair Wardrop requested a motion to approve the minutes of the February 10, 2010 meeting. On motion duly made and supported, the Commission approved the minutes of the February 10, 2010 meeting.

2. AMENDMENTS TO AGENDA

3. INFORMATIONAL REPORTS

- a. **Director's Report:** The Commission received the following report from State Personnel Director, Jeremy S. Stephens.

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 an unclassified position:

1. A request dated September 10, 2010, to serve as the Senior Policy Advisor to the Attorney General. Concurrently, the vacated Director of Executive Affairs position was abolished. The request was approved effective September 13, 2010.
2. A request dated September 24, 2010, to serve as a Director of Executive Affairs. Concurrently, the position of Special Assistant to the Attorney General was abolished. The request was approved effective September 20, 2010.
3. A request dated October 7, 2010, to serve as a Constituent Relations Analyst. Concurrently, the position of Director of Executive Affairs was abolished. The request was approved effective October 3, 2010.
4. A request dated October 15, 2010, to serve as a Constituent Relations for Southeast Michigan. Concurrently, the position of Constituent Relations Analyst was abolished. The request was approved effective October 3, 2010.

Department of Education

The Department of Education submitted the following requests to establish an unclassified position:

1. A request dated April 12, 2010, to serve as the State School Reform/Redesign Officer/Deputy Superintendent. The request was approved effective April 18, 2010.
2. A request dated April 29, 2010, to serve as the Education Advisor to the Office of the Superintendent. Concurrently, the position of Chief of Staff was abolished. The request was approved effective April 18, 2010.

Department of Energy, Labor, & Economic Growth

The Department of Energy, Labor, & Economic Growth submitted the following request to abolish an unclassified position:

1. A request dated June 15, 2010, to abolish the Deputy Director position. The request was approved effective July 25, 2010.

Department of Human Services

The Department of Human Services submitted the following request to establish an unclassified position:

1. A request dated March 10, 2010, to serve as the Chief Deputy Director of Regulatory and Organizational Support. Concurrently, the position of Deputy Director for Children & Audit Policy and Special Assistant was abolished. The request was approved effective March 7, 2010.

Department of Natural Resources & Environmental Quality

The Department of Natural Resources & Environmental Quality submitted the following request to establish an unclassified position:

1. A request dated May 4, 2010, to serve as the Michigan Port and Maritime Advisor. Concurrently, the position of Legislative Director was abolished. The request was approved effective April 18, 2010.

Civil Service Commission Rules require that the State Personnel Director report to the Commission on the promulgation of regulations, which are issued to further implement Commission rules.

Regulation 2.07, Drug Testing and Regulation 2.08, Alcohol Testing (effective April 4, 2010)

This regulation has been updated to reflect reference to the standards and protocols found in the U.S. Department of Transportation and U.S. Department of Health and Human Services testing regulations. Referencing current federal regulations as the governing procedures eliminates the need for frequent revisions and will also track provisions in existing collective bargaining agreements to create more consistent standards across the classified workforce.

Regulation 3.02, Student Assistants in the Classified Service (effective June 13, 2010)

This regulation has been updated to reflect the addition of a new standard to address special non-career classifications. Standard O clarifies Civil Service rule 2-1.2 which allows the establishment of special non-career classifications.

Regulation 3.04, Selection of Employees for Position Vacancies, Regulation 3.08, Establishment, Use, and Duration of Applicant Pools Maintained by Civil Service, and Regulation 3.12, Return-to-Work Appointments (effective August 22, 2010)

This regulation has been updated due to the implementation of NEOGOV. In addition, Regulation 3.03, Selection of Employees for Position Vacancies When Using a Certified Applicant Pool Maintained by Civil Service is no longer needed as the necessary language has now been incorporated into Regulation 3.04. Therefore, Regulation 3.03 has been abolished.

Regulation 5.07, Performance-Pay Programs (effective October 1, 2010)

This regulation has been updated to reflect changes to Standard C.8 with regard to fiscal year 10-11 limits which prohibit performance-pay increases to be awarded or approved by extending the ending date from the previous September 30, 2010, to December 31, 2010.

Regulation 5.09, Annual, Personal, and School and Community Participation Leave, and Regulation 5.10, Sick Leave (effective October 17, 2010)

This regulation has been updated to clarify the timing of leave balance payoffs for employees who are eligible for the incentivized retirement plan available under MCL 38.19j but instead elect a standard retirement.

Regulation 5.09, Annual, Personal, and School and Community Participation Leave (effective October 31, 2010)

This regulation has been updated to amend allow using annual leave to extend employment. The change is to address issues arising from the short notice for the election period for the incentivized retirement plan available under MCL 38.19j. The amendments will allow annual leave to be used to extend employment for three days during November and December of 2010, or longer if authorized by the State Personnel Director.

Pay-For-Performance System Review

At the February 10, 2010 Civil Service Commission meeting, the Commission approved the recommendation of the Coordinated Compensation Panel for the Commission to direct the State Personnel Director to undertake a review of the pay-for-performance system. We continue to have discussions regarding the pay-for-performance program and will provide further updates as information is collected.

b. Commission Tributes

On a motion duly made and supported the following Commission Tributes were adopted:

Kelly Keenan (Commissioner)
D. Daniel McLellan (General Counsel to the Commission)

4. UNFINISHED BUSINESS

There was no unfinished business.

5. NEW BUSINESS

a. Civil Service Commission Budget FY11

Certificate of Payroll FY 2010 and Budget FY 2011

Ms. Carol Vargovich, Director, Budget & Financial Services Division, addressed the Commission regarding the financial summary of FY10, the Certificate of Payroll and appropriation adjustments that were made for FY11 operating budget. The budget is primarily a continuation of the prior fiscal year. The budget recognizes economic adjustments for retirement, insurances, and workers' compensation and savings associated with retirements and attrition. The aggregate payroll for the classified service from October 1, 2009 through September 30, 2010, is \$4,792,516,886.

On motion duly made and supported, Resolution 2010-11 and Resolution 2010-12 were approved.

b. Travel Reimbursement Rates for FY 2010-2011 (interim approval granted)

Joyce Van Coevering with the Department of Technology, Management and Budget presented the request for approval on travel rates for FY 10-11. In a memorandum dated September 24, 2010, DTMB Director Ken Theis requested interim approval

effective October 1, 2010 for an increase in the standard mileage rate from \$0.362 to \$0.365.

On motion duly made and supported, Resolution 2010-13 was approved.

c. Proposed Rule Amendments: Rules 3-3, 8-3, & 9-1, Technical Qualification Appeals

General Counsel D. Daniel McLellan addressed the Commission regarding proposed amendments to Rules 3-3, 8-3, and 9-1 regarding Technical Qualification Appeals to streamline the technical qualification complaint process by removing two appellate steps with little remediable effect and retaining appellate review by the State Personnel Director or the Director's designee. The process under the rule change applies to all technical qualification decisions issued after December 8, 2010.

On motion duly made and supported, Resolution 2010-14, Amendments to Civil Service Rules – Technical Qualification Complaints was approved.

d. Letter of Understanding (LOU) and Secondary Agreement between MSEA and Department of Technology, Management and Budget (interim approval granted).

General Counsel D. Daniel McLellan addressed the Commission regarding the LOU and Secondary Agreement between MSEA and Department of Technology, Management and Budget which updates references in the existing secondary agreement to reflect the creation of the Department of Technology, Management and Budget.

On motion duly made and supported, the Letter of Understanding was approved.

e. Approval of CBA Amendment between OSE and MSEA regarding Contract Extension, Reopener Clause, Layoffs & Banked Leave Time, New State Health Plan, Seniority Definitions, Seniority Calculation and Seniority Reporting (interim approval granted)

General Counsel D. Daniel McLellan addressed the Commission regarding the collective bargaining agreement (CBA) between OSE and MSEA which amends and extends the primary CBA for the Labor & Trades and Safety & Regulatory Units. The agreement amends the current CBA to: 1) allow for reopened negotiations if other units agree to wage increases, 2) cap temporary layoff days, 3) authorize the new State Health Plan for new hires beginning April 1, 2010, and 4) make adjustments to seniority provisions. The agreement also provides to retain existing CBA language for one year until December 31, 2011 (non-economics); economics ending September 30, 2012. Interim approval was granted June 9, 2010.

On motion duly made and supported, Resolution 2010-015 approved the amendment, excluding the CBA extension.

On a separate motion duly made and supported, Resolution 2010-16 regarding the contract as a newly approved agreement was approved.

f. Approval of Secondary Agreement between UAW (Human Services and Administrative Support Units) and the Department of Natural Resources & Environmental Quality (DNRE) reflecting the creation of the DNRE (interim approval granted)

General Counsel D. Daniel McLellan addressed the Commission regarding the secondary agreement between OSE and UAW reflecting the creation of the Department of Natural Resources and Environment.

On motion duly made and supported, the secondary agreement between OSE and UAW was approved.

g. Approval of CBA Amendment between OSE and UAW regarding Contract Extension, Layoffs & Banked Leave Time, New State Health Plan, and other misc. (interim approval granted)

General Counsel D. Daniel McLellan addressed the Commission regarding the collective bargaining agreement (CBA) between OSE and UAW which amends and extends the primary CBA for the Human Services and Administrative Support Units. The agreement amends the current CBA to: 1) allow for fund withdrawal from the UAW training fund, 2) authorize 26 hours of banked leave time during 2010, 3) authorize the new State Health Plan for new hires beginning April 1, 2010, 4) prevents temporary layoffs during 2010, 5) address disciplinary packet handling, and 6) reduce random drug testing. The agreement also provides to retain existing CBA language for one year until December 31, 2011 (non-economics); economics ending September 30, 2012. Interim approval was granted March 23, 2010.

On motion duly made and supported, Resolution 2010-017 approved the amendment, excluding the CBA extension.

On a separate motion duly made and supported, Resolution 2010-18 regarding the contract as a newly approved agreement was approved.

h. Approval of CBA Amendment between OSE and AFSCME regarding Contract Extension, Re-open Clause, Layoffs & Banked Leave Time, New State Health Plan, and other misc. (interim approval granted)

General Counsel D. Daniel McLellan addressed the Commission regarding the collective bargaining agreement (CBA) between OSE and AFSCME which amends and extends the primary CBA for the Institutional Unit. The agreement amends the current CBA to: 1) authorize 45 hours of banked leave time during 2010, 2) authorize the new State Health Plan for new hires beginning April 1, 2010, and 3) address numerous other issues, including the disciplinary process, layoffs, drug testing, notices, compensatory time, schedules, training, and administrative leave. The agreement also provides to retain existing CBA language for one year until December 31, 2011 (non-economics); economics ending September 30, 2012. Interim approval was granted March 17, 2010.

On motion duly made and supported, Resolution 2010-019 approved the amendment, excluding the CBA extension.

On a separate motion duly made and supported, Resolution 2010-20 regarding the contract as a newly approved agreement was approved.

i. Letter of Understanding between OSE & MSEA regarding Secondary Agreements Affected by Consolidation of the Department of Natural Resources and the Department of Environmental Quality under Executive Order 2009-45 (interim approval granted)

General Counsel D. Daniel McLellan addressed the Commission regarding the secondary agreement between OSE and UAW reflecting the creation of the Department of Natural Resources and Environment. Interim approval was granted March 22, 2010.

On motion duly made and supported, the secondary agreement between OSE and MSEA was approved.

j. Approval of Secondary Agreement between UAW (Human Services and Administrative Support Units) and the Department of Technology, Management and Budget

General Counsel D. Daniel McLellan addressed the Commission regarding the secondary agreement between UAW and the Department of Technology, Management and Budget (DTMB). No violations of the Commission's rules on prohibited subjects of bargaining have been identified.

On motion duly made and supported, the secondary agreement between UAW and DTMB was approved.

k. Extension of Insurance Benefits

General Counsel D. Daniel McLellan addressed the Commission regarding the request for discussion from Commissioner Abood regarding options for extending NERE dependent group insurance coverage to adult co-residents of unmarried state employees. General Counsel McLellan indicated in 2004, the Office of the State Employer (OSE) and Unions negotiated same-sex domestic partner benefits, however, in 2004, the Michigan Constitution was amended to prohibit such benefits. He indicated that universities made benefit changes to change "same sex domestic partner" to "one unrelated adult co-resident."

Director Sharon Bommarito and Chief Deputy Director Cheryl Schmittziel, Office of the State Employer (OSE) addressed the Commission regarding Letters of Understanding submitted to modify the eligibility guidelines for the State Health Plan to allow coverage for "other eligible individuals" (OEI), between the OSE and the UAW (Administrative Support and Human Services unit), OSE and SEIU Local 517-M (Technical, Scientific and Engineering, and Human Services Support units), and AFSCME (Institutional unit). The OEI criteria are:

- At least 18 years old
- Not a relative of the state employee
- Share a residence with the state employee for 12 months (other than as tenant, renter, boarder, or employee)

- Children and dependents of OEI are also covered

Ms. Bommarito reiterated that similar agreements were negotiated and ratified in primary negotiations in 2004, but were voluntarily withdrawn by the parties before consideration by the Commission following the passage of Proposal 04-2, adding Article 1, §25 to Michigan's Constitution, with the commitment that the subject would be revisited after the courts provided guidance on the interpretation of the Constitutional amendment. Ms. Bommarito indicated that these changes provided for in the Letters of Understanding are consistent with what was agreed upon in 2004 and with what has been put into place by other public employers in Michigan since that time. Director Bommarito requested the Commission to approve the Letters of Understanding and also to approve similar changes for non-exclusively represented employees.

General Counsel McLellan addressed several questions to the Commission regarding the LOUs as written which appear to allow multiple individuals to qualify as an OEI. Additionally, he indicated that standard University models limit to a single OEI and the current LOUs don't limit to one individual. Question was also raised by Counsel regarding the effective date of LOUs as Counsel believes if an immediate effective date is approved, a waiver by the legislature would be necessary since the Constitution clearly indicates that such increase in benefit provisions for state employees need to go through the normal Governor budget proposal which allows for gubernatorial legislative veto.

General Counsel McLellan also questioned the clarity of an enrollment period and premium structure as no such structure has been identified or addressed, in addition to question as to the availability of COBRA/CGIS for an OEI.

Commissioner Abood questioned Director Bommarito as to whether any changes have been made to the LOUs to address any of the concerns highlighted by Counsel. Ms. Bommarito indicated the intent was not to cover spouse and OEI and this language could be addressed.

Interim Chairman Mac Wardrop questioned Director Bommarito as to what cost estimates have been studied. Director Bommarito indicated that studies of participation rate of employees in major universities, some counties and cities have been conducted and is less on average than 1%, with a projected cost if one individual was covered at \$2.2 million, and if benefits were extended to other eligible dependents, costs are estimated at \$5.7 million. Director Bommarito further explained that funding would come from the Group Insurance Fund and that the State Budget Office has confirmed there is adequate money to cover this expense for FY11.

Thomas Brott, Labor Representative for the Michigan Association of Governmental Employees (MAGE), addressed the Commission regarding the request of the OSE and stated that MAGE is not adverse to the concept of the Benefits Plus One proposal, however, MAGE does object to the timing of OSE's proposal to expend millions of dollars by extending health care benefits to other eligible individuals, while at the same time NEREs are being denied a 3% pay increase that was negotiated in good faith. He indicated this action would only exacerbate the morale problem with state employees and that MAGE finds it reprehensible that the state would consider this type of expenditure until the NEREs are made whole for the 3%.

Representative Rick Jones, Eaton County (District 71), addressed the Commission and urged the Commission to vote no on the request by OSE, stating this would be an additional burden to the state at a time we are looking at a \$1.6 billion budget deficit.

Interim Chair Mac Wardrop motioned to table the request due to lack of clarification in the agreements. Commissioner Abood seconded. Commissioner Blockett requested the issues be quickly addressed and heard at the next meeting. The motion passed.

6. PUBLIC COMMENT

Jay Kaplan, American Civil Liberties Union of Michigan (ACLU), addressed the Commission regarding its current anti-discrimination policy (Rule 1-8). Mr. Kaplan stated the current policy prohibits discrimination in the hiring, firing, and terms and conditions of employment on the basis of religion, race, color, national origin, age, sex, sexual orientation, height, weight, marital status, partisan considerations, or a disability or genetic information that is unrelated to the person's ability to perform the duties of a particular job or position. He stated that this rule mirrors the categories in Governor Granholm's Executive Order 2008-22 regarding state employees, with the exception of the category of "gender identity and expression." He indicated that omission of "gender identity and expression" from Civil Service rules excludes transgender persons from employment protection and requests the Commission add gender identity and expression to its policy in compliance with the Executive Order.

President Ron Marabate, Association of State Employees in Management (ASEM), addressed the Commission with regard to the breaching of the 2007 Consensus Agreement which provided for a 3% increase for NEREs, and also addressed the recent legislation passed which requires all state workers to contribute 3% of their gross wages for a new retiree healthcare fund, resulting effectively a 6% wage cut for NEREs for FY11. Mr. Marabate indicated this is in addition to state employee concessions which included banked leave time, furlough days and increased healthcare costs. ASEM reiterated the Commission's agreement with the Coordinated Compensation Panel's recommendation that Pay for Performance be closely reviewed by staff and report those findings and recommendations.

ASEM requests that the Commission take a more serious look at how all state workers are treated with respect, and in a fair and equitable manner.

7. COMMISSION APPEALS

In a closed session the Commission considered 15 recommended decisions of the Employment Relations Board (ERB). Copies of the review sheets indicating the Commission's actions on these decisions are on file with the Civil Service Commission.

ADJOURNMENT

There being no further items for Commission approval or public comments to be heard, Interim Chair Wardrop adjourned the meeting at 11:58 a.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, Jeremy Stephens, State Personnel Director, hereby certify that the foregoing are the Minutes of the Civil Service Commission meeting of December 8, 2010.



State Personnel Director