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Janine M. Winters, Director
Janet McClelland, Chair
James Barrett, Commissioner
Jace Bolger, Commissioner
Jeff Steffel, Commissioner
Michigan Civil Service Commission
Capitol Commons Center, 2nd Floor
Lansing, MI 48909

Dear Director Winters and Members of the Civil Service Commission,

I write to you to express my disagreement with the rule revision proposal contained in SPDOC 20-06 and 20-08, as well as the stated rationale that these amendments are required by recent Michigan and U.S. Supreme Court precedent. Such is clearly not the case.

After the Legislature passed right-to-work legislation which became effective in 2013, Michigan's Public Employment Relations Act was amended to reflect that public employees cannot be *required* to join a public union or pay union dues or fees to a public union as a condition of employment. MCL 423.210(3). The Michigan Supreme Court subsequently clarified that "allowing the imposition of mandatory agency shop fees upon civil servants is beyond the [Civil Service Commission's] constitutional authority." *UAW v Green*, 498 Mich 282, 293 (2015).

Subsequently, the U.S. Supreme Court's 2018 decision in *Janus v AFSCME* involved an Illinois public employee agency-fee scheme (Illinois is not a right-to-work state), but the Court concluded that even in the absence of right-to-work legislation, involuntary public employee union dues deductions violate the First Amendment. Central to the discussion, the Court held that "neither an agency fee nor any other payment to the union may be deducted from a nonmember's wages . . . unless the employee affirmatively consents to pay." *Janus v AFSCME*, 138 S Ct 2448, 2486 (2018). Underlying that analysis is the bedrock principal that the First Amendment's free speech protection "includes both the right to speak freely and the right to refrain from speaking at all." Id. at 2463.

Presently, the Civil Service Rules provide that "[i]f agreed to in a collective bargaining agreement, the state may deduct the dues or service fee of a member of an exclusively represented bargaining unit through payroll deduction," but only if the employee has "made a voluntary authorization." Civil Service Rule 6-7. Furthermore, the rule provides that the State Personnel Director "shall establish the exclusive process for employees to authorize or deauthorize deduction of dues or fees." *Id.*

The Court's opinion in *Janus* focuses on the general requirement that employees must affirmatively and voluntarily consent to pay union dues or fees. But the proposed rule change goes well beyond the contemplation of *Janus*, and instead would require public employees to affirmatively authorize or reauthorize these deductions each fiscal year; if the employee fails to complete that reauthorization annually, the decision lapses and the automatic deduction will cease. Nothing in *Janus*, however, requires this change to current rules; so long as state employees have affirmatively consented to union dues or fee deductions at some point (even before right-to-work legislation was enacted), those deductions are permissible.

Moreover, while it is true that the decision to authorize deductions for union dues or fees must be voluntarily given in light of an employee's First Amendment associational rights, those rights flow both to the decision to support, or not support, a collective bargaining representative equally. Thus, while the Commission has expressed concern that the current rules are "problematic", the new rules are even more so in that they appear to create unequal treatment between the employee's right to authorize or deauthorize payments to a union. While the "director shall establish the exclusive process for employees to *authorize or deauthorize* deduction of dues or fees" (emphasis added), the proposed rule singles out authorizations, providing that "an authorization will expire if not authorized or reauthorized during the previous year." The proposed rule change creates a significantly more burdensome process for an employee to exercise his or her rights to associate with a union and financially support it, while treating disassociation from a union as the preferred status quo. In reality, many employees are likely to be surprised that their affirmative and voluntary decision to authorize union dues or fee deductions, either presently or years in the past, will automatically lapse because the proposed rule presumes that employees wish to disassociate from their union. Apart from violating a general sense of parity regarding the respective rights at issue, i.e. "both the right to speak freely and the right to refrain from speaking at all," it is difficult to understand how this proposed rule is not, as Governor Whitmer recently noted, "a direct assault on our hardworking state employees" and their rights in this regard.

In light of the current public health crisis, the benefit and importance of unions – which tirelessly advocate for the health, safety and financial well-being of their members – cannot be overstated. State employees are no less deserving of these benefits than their private sector counterparts. Consequently, in light of the forgoing, I ask the Commission to reconsider this course of action and abandon the proposed rule changes.

Sincerely,

Dana Nessel

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