

MICHIGAN CIVIL SERVICE COMMISSION
Public Meeting
July 13, 2020

Present: Janet McClelland, Chair
James Barrett, Commissioner
Jase Bolger, Commissioner
Jeff Steffel, Commissioner
Janine M. Winters, State Personnel Director

1. CALL TO ORDER

The meeting of the Michigan Civil Service Commission (Commission) was opened by Chair McClelland at 10:11 a.m. in the Capitol Commons Center, 400 S. Pine Street, Lansing, Michigan.

Approval of Minutes

Chair McClelland requested a motion to approve the minutes of the December 11, 2019 meeting. On motion duly made and supported, the minutes of the December 11, 2019 meeting were approved.

2. AMENDMENTS TO AGENDA

There were no amendments to the agenda.

3. INFORMATIONAL REPORTS

State Personnel Director's Report

The director reported that seven unclassified positions were established and two were abolished across six departments. Details on the positions, departments, and titles are in the report.

Since the last meeting, notice was given in SPDOCs 20-01, 20-02, 20-03 and 20-05 of amendments to regulations 2.03, 4.02, 4.03, and 5.10. These amendments were all effective on the date of issuance.

The Honorable William Whitbeck was reappointed to the Employment Relations Board to serve as a member for a term through May 1, 2023.

4. UNFINISHED BUSINESS

There was no unfinished business.

5. NEW BUSINESS

A. Revised Increased Minimum Compensation for Classifications (Interim Approval Granted)

General Counsel John Gnodtke summarized that Item 5-A involves pay increases for a few non-career classifications to mirror increases in the minimum wage under state law. The Commission has taken similar action several times the past few years. Interim approval was previously granted.

On motion duly made and supported, Agenda Item 5-A was unanimously approved.

B. Travel Regulations (Interim Approval Granted)

General Counsel Gnodtke explained that modifications to standardized travel rates to update a per-diem rate were overlooked during the last round of updates. Interim approval was previously granted.

On motion duly made and supported, Agenda Item 5-B was unanimously approved.

C. Certification of Corrected FY 19 Aggregate Payroll (Interim Approval Granted)

General Counsel Gnodtke summarized that the certification of corrected FY 19 aggregate payroll involves modifications to the certification of last year's aggregate payroll. At the time of the Commission's December meeting, the books had not yet closed so only an approximate certification could occur. Interim approval was granted this spring to a modified certification based on the final closed books.

On motion duly made and supported, Resolution 5-C was unanimously approved.

D. Amendment to Rule 5-6—Additional Compensation: Miscellaneous (Interim Approval Granted)

- 1. Interim Rule Action on Rule 5-6 of April 4, 2020**
- 2. Interim Rule Action on Rule 5-6 of June 11, 2020**

General Counsel Gnodtke explained Items 5-D.1 and 2 involve interim rule actions taken by the director with the chair's consent to implement a special COVID-19 premium for healthcare workers and first responders and then to extend it through June 29, 2020. The provisions have now expired, so whether the Commission takes action or not has no ongoing legal effect. Not taking action would not void actions taken in reliance on the interim rule action. To expedite the meeting, staff recommended closing this agenda item with no further action. The Commission took no action.

E. Letters of Understanding (Interim Approval Granted)

- 1. Premium Pay COVID-19 (AFSCME, MCO, MSEA, MSPTA, SEIU, UAW)**
- 2. Extension Premium Pay COVID-19 (AFSCME, MCO, MSEA, MSPTA, SEIU, UAW)**
- 3. Orientation (SEIU 517M HSS)**
- 4. RN Overtime DOC (UAW)**
- 5. Overtime Pay KPH COVID-19 (AFSCME)**
- 6. Sick Leave COVID-19 (AFSCME, MSEA, SEIU, UAW)**

General Counsel Gnodtke summarized several letters of understanding involving COVID-19 premium, orientation, overtime, and sick leave. Staff reviewed the LOUs and identified no prohibited subjects implicated. Interim approval was granted for the LOUs.

On motion duly made and supported, all LOUs included in Agenda Item 5-E were unanimously approved.

F. Proposed Amendments to Rule 6-7, Dues and Service Fees

General Counsel Gnodtke summarized proposed amendments to rule 6-7 on dues and service fees. Several hundred state employees who were paying service fees when required as a condition of employment before the *Green* and *Janus* decisions have not

subsequently authorized their continued payment now that they are voluntary. Additional circulated amendments would (1) eliminate payroll deduction of service fees from 2022 since there is no longer a legal requirement to have them, and (2) require annual reauthorization to continue dues and service fees to exclusive representatives. Under the proposed rule amendments, authorizations would expire each October if not authorized or reauthorized during the previous fiscal year. The final change is a requirement for the state personnel director to provide annual notice to employees of rights and duties under the classified system of collective bargaining. Proposed rule changes were previously circulated and are now ready for any action deemed appropriate by the Commission.

Liza Estlund-Olson, director of the Office of State Employer, read a letter from Governor Whitmer that stated:

Today, the Commission is set to vote on a rule that would weaken collective bargaining rights for state employees who are working on the front lines to keep Michiganders safe from COVID-19. Michigan is home to more than 40,000 dedicated state employees who provide critical services to the people of our state. The vast majority of our state employees have been working around the clock for the past four months to protect our families from the spread of COVID-19 and save lives. I have no doubt that their tireless efforts on our behalf have saved lives and protected our most vulnerable communities. The proposed action the Commission is voting on today is a direct assault on those hardworking men and women, who deserve leaders who will work on their behalf. We are in the middle of a global pandemic and the worst economic crisis in our lifetime. COVID-19 has taken the lives of more than 6,000 of our neighbors, friends, parents, grandparents, and loved ones. It has had a devastating impact on families across the state. The notion that the Civil Service Commission would choose this moment to take power away from health care workers, road repair workers, corrections officers, and unemployment call center employees on the front lines is unthinkable. This action will make it harder for frontline workers to negotiate for strong wages, health care and a secure retirement. It is a slap in the face to those who have risked their lives every day since COVID-19 first arrived in Michigan. This is not who we are as leaders, and it is not who we are as Michiganders. I'm calling on the Civil Service Commissioners to do the right thing and reject this anti-worker proposal. Our frontline state workers have our back, and now it's time for us to have theirs.

Vincent Vernuccio, senior fellow at the Mackinac Center for Public Policy, addressed the Commission in support of the changes. Mr. Vernuccio noted that it is a language change and not a change of the law. The change takes out the illegal service provision from payroll, ensures good bookkeeping per annual opt-in, and gives state employees an annual choice to pay union dues during these times of economic uncertainty. It informs employees of their rights and ensures that the state has the requisite evidence to take money from a state employees' payroll for a third party. In 2012, Michigan passed right-to-work, meaning that unions could not get workers fired for not paying dues. In 2018, the US Supreme Court decision in *Janus* (1) gave rights to right-to-work to employees around the country and (2) called for the need for evidence of affirmative consent to protect public employees' First Amendment rights. The language change is simply giving state employees a choice.

Chuck Browning from the UAW urged the Commission to reject the proposed changes because they violate the UAW's collective bargaining agreement and interfere with fundamental rights. This change is unnecessary because under the UAW's contract

employees can revoke dues authorization anytime they choose. The proposed change does not protect workers' rights or choices but undermines the choices of the vast majority of state workers that have opted for union membership and payment of dues. It hurts unions by diverting resources from bargaining and policing contracts. The *Janus* decision was solely about collecting agency fees from non-members. It does not justify the proposed rule change. The Commission cannot change the rule proposed, which will unilaterally cancel members' authorizations. Members could be caught off guard and fall out of good standing and lose their ability to participate in internal affairs like elections, meetings, and employment to union positions. The timing of the rule change is also shocking. Since employees are working from their homes, the ability to communicate with the union is limited. The UAW also has concerns about the state's ability to roll out the system for reauthorization, which will further limit the amount of time members have to ensure that dues aren't stopped. Even if there were legal or factual justification for the change, the short timeline is arbitrary and unreasonable. There is also no justification for stopping the voluntary fee-payer option.

Ava Barbour from the UAW commented on legal issues related to the proposed rule change. *Janus* has no application because it was solely about collecting agency fees from non-members. The *Janus* court said nothing about union members who have chosen to authorize union dues from paychecks. The UAW has cited over 20 cases brought after *Janus* that address deduction of membership dues. The courts are clear that *Janus* does not apply. The UAW also has cited a dozen states' attorneys general and our attorney general who state that it has no application. The proposed rule change is not necessitated by *UAW v Green*, which allowed the state right-to-work law to apply to the civil service. The UAW contract would be impaired if the Commission were to adopt this rule before 2022, when it expires. This rule is unnecessary to protect employees' rights and is inconsistent with the Commission's role as a neutral body.

Ed Mitchell from UAW Local 6000 stated that the proposed rule change would violate the current collective bargaining agreement's Article II, § A. Dues deduction is not a prohibited subject. If dues are stopped, members would no longer be in good standing and would not be eligible for such benefits as the rights to run for union office, vote in union elections, vote to ratify contracts, attend membership meetings, receive union benefits such as discounts, tuition, legal services, program, scholarships, and travel programs, and more. The Commission should honor the agreement that was negotiated in good faith, ratified by the parties, and approved by the Commission.

Joey Combs from SEIU Local 517-M stated her deep concern and disappointment with the proposed change. State employees should be able to trust and have confidence in the word and action of the employer and the Commission. The proposed changes create barriers for state workers to join and remain in their union and violate contracts. The proposal leads to a lack of trust and hurts the state's ability to attract and keep a qualified workforce. Employees should be able to bargain in good faith, speak with a collective voice, and work collaboratively with the employer. Approved contracts should be honored by the Commission and not picked apart and altered to suit political or other means. The proposed rule changes have not been asked for by employees or organizations. Union members know their rights and have exercised those rights when necessary. The proposed changes come during a global health pandemic when state employees are servicing the front lines and working long hours to maintain vital public services. Rewarding that dedication by violating the contract creates hurdles and removes people from the union.

George Heath from SEIU 517-M was not going to speak because of being in a high-risk group for contracting COVID-19 and because the Commission had already made up its mind. The Commission was not created to be a political organization, but it appears to have become a tool to eliminate public unions and stifle workers in general. The right-to-work law didn't kill public unions, so we are back again with a big club to swing at labor. Those who belong to other clubs or organizations do not reapply for membership on a yearly basis. Why should people be forced to reapply to the union on a yearly basis? Belonging to a union is a decision that can be withdrawn anytime. Essential employees take care of those on unemployment, assure safe transportation of goods and services, take care of the healthcare needs and guard prisoners. We have DNR firefighters, radio technicians, forensic technicians, and many others. These people don't deserve to have their lives made more difficult just to fulfill a philosophy of killing unions.

Richard Cardenas from MSEA spoke on conservation officers who are in the front lines to keep citizens safe. There have been recent issues regarding scheduling, pay, overtime, comp time, and annual and sick leave increasingly coming into question. The proposed amendments do not further relationships between parties nor benefit the employer. The union has been in compliance with the *Janus* decision. The proposed amendment violates our First Amendment right and would add unnecessary hurdles. These efforts are trying to take money away from the union and provide barriers by restricting the flow of resources to facilitate collective bargaining. If commissioners are concerned that employees are not educated, why don't they send an email to all employees educating them of their rights? Additionally, why is the proposal addressed to only employees paying fees. Automatically unenrolling employees infringes on our ability to make our own decisions. The proposal has clear bias and anti-union animus. The state trooper association is not expected to be affected by these amendments. Political preference and nepotism should not be considerations for the Commission. Conservation officers deserve to be represented in bargaining just as much as troopers and not have unnecessary steps added so our rights are made more burdensome.

Andrew Skindell from MSEA addressed the termination of dues payment after a year if not reauthorized. Since 2014 state workers have been free to revoke their fees and dues deductions to the union. All are aware and have been informed that we can make such a choice anytime without consequence. The right has been exercised in both directions. Annual notice to exclusively represented employees is unnecessary. When park rangers join or support our union, they are not waiving their right not to join a union; they are affirmatively invoking or expressing their First Amendment right to join a union. The proposed rule amendment is contrary to the existing collective bargaining agreement. The terms of the agreement remain through 2021 and cannot be changed through rulemaking.

Roderick Jackson stated that he has been a state employee for over 26 years and only had to sign up one time to become a member. It is unreasonable to just take away his rights. Employees can opt out of the union anytime. We don't need the Commission to decide that arbitrarily. The new amendments are forcing our members to destroy the union and that is not right. This body should be helping employees and the employer improve their working relationship instead of putting us in a fight to keep our ability to be represented and negotiate fairly. The Commission has become a dictatorship eroding the rights of workers.

Commissioner Bolger asked General Counsel Gnodtke to explain the reference to *Janus* and workers' need to knowingly and freely consent to waive their right to join a union and what share of state employees authorized their union deduction before 2014?

General Counsel Gnodtke indicated that just under 60% of those with deduction had authorized since 2014. He also clarified that the right-to-work law does not technically apply to the classified workforce. The Michigan Supreme Court decision in *Green* did not hold that the right-to-work law applied to the classified civil service. It instead ruled that the Commission did not have the authority to implement a compelled system of fees deduction. While it is a minor point, it is a misconception that continues. The ultimate effect was similar in that it required an end to mandatory service fees for employees who declined to join and pay dues to the union, but it was based on a separate legal basis than the right-to-work law.

Commissioner Bolger asked about the ability to make these changes during contracts' terms.

General Counsel Gnodtke explained that dues deduction is not a prohibited subject, but when the last union contracts took effect on January 1, 2019, rule 6-7 stated that the director shall establish the exclusive process for employees to authorize or de-authorize deduction of dues or fees. Under rule 6-3.2(b)(7), the system of collective bargaining is a prohibited subject. The parties cannot contractually determine the process to authorize the deductions because the Commission's system of collective bargaining does not allow it. So that is why the proposal would discontinue the availability of service fees completely at the expiration of the contracts on January 1, 2022. Because the parties do have the ability, under rule 6-7 currently, to provide for the deduction of dues and fees in their contracts, which they have done. The existence of payroll deductions for dues and service fees is provided in the contract and something rule 6-7 allows and allowed when the contracts were approved effective January 1, 2019. The process for authorizing and deauthorizing is part of the system of collective bargaining under rule 6-7, which since 2019 has been exclusively retained by the Commission through the state personnel director to determine. That is the basis of why these changes could take effect on authorization and deauthorization during the term of the contract.

Commissioner Steffel asked if there were statistics about the number of employees providing 24-hour or essential services?

General Counsel Gnodtke said that statistics did not exist, but reports could be created.

Commissioner Steffel asked to confirm that this change would now affect contracts in terms of how people are paid, grievances, and discipline.

General Counsel Gnodtke confirmed that this was correct and that the commission had, at the request of the administration, also taken emergency rule action and approved letters of understanding to grant pay premiums for critical infrastructure workers.

Commissioner Bolger thanked the speakers for their comments and for their work. While there is disagreement on the policy at hand, their work and effort and that of those that they represent are deeply appreciated. Commissioner Bolger did see this as a protection of rights and disagreed with claims that it impacts the rights to collective bargaining. Unions remain free to make their case. But the proposal does protect individual workers' rights. Workers remain free to make their choice. Implementation should not be delayed but expedited. Acting in this capacity on behalf of government, the Commission should not make it harder for individuals to exercise their rights; it should make it easier. The commission should not assume that workers endlessly waive their rights. Workers should be clearly, freely, and knowingly given the opportunity to consent each and every year.

Chair McClelland agreed with the notification language in the new rule and thinks it is important for employees to be aware of where their money is going. But she believes that the current system does provide employees through self-service and our call center to indicate whether they prefer to begin or end providing dues and fees.

On motion duly made and supported, Item 5-F was approved by a vote of 3 to 1, with Chair McClelland voting No.

G. Memorandum of Understanding on Retiree Insurances (Interim Approval Granted)

General Counsel Gnodtke summarized the MOU involves revisions to insurance benefits to state retirees. State law calls for the Commission and DTMB director to approve these benefits and any changes to them. The four changes are equalizing the in- and out-of-network hearing-aid benefit, waiving some copayments for the remainder of the fiscal year in the health plan, ending fourth-quarter carryover treatment of deductibles, which is not allowed under the new Medicare Advantage program, and ending the limit on out-of-network substance-abuse treatment. Interim approval was granted.

Bob Kopasz, Chair of the State Employee Retirees Association (SERA), indicated that Jan Winters and the Employee Benefits Division answered all questions and addressed all concerns regarding these healthcare changes. SERA supports the Commission in retiree healthcare.

Commissioner Bolger thanked Jan Winters and staff for their outreach to make these changes. Jan Winters in turn thanked Bob Kopasz and SERA leadership for their help in implementing the Medicare Advantage plan.

On motion duly made and supported, Agenda Item 5-G was unanimously approved.

6. PUBLIC COMMENT

There was no public comment.

ADJOURNMENT

There being no further items for Commission approval or public comments, Chair McClelland called for a motion to adjourn. On motion duly made and supported, the meeting was adjourned at 11:28 a.m.

These minutes will become final upon approval by the Civil Service Commission.

MICHIGAN CIVIL SERVICE COMMISSION
Public Meeting
December 16, 2020

Present: Janet McClelland, Chair
James Barrett, Commissioner
Jase Bolger, Commissioner
Jeff Steffel, Commissioner
Janine M. Winters, State Personnel Director

1. CALL TO ORDER

The meeting of the Michigan Civil Service Commission (Commission) was opened by Chair McClelland at 10:04 a.m. General Counsel John Gnodtke was asked to explain the process for conducting the meeting. As was noted in the public notice for the meeting and on the commission's website, the meeting was held remotely because of the current public-health situation. Chair McClelland and Commissioners Barrett, Bolger, and Steffel participated remotely from Springfield, Illinois, Perry, Norton Shores, and Springport, Michigan.

Approval of Minutes

Chair McClelland requested a motion to approve the minutes of the July 13, 2020 meeting. On motion duly made and supported, the minutes of the July 13, 2020 meeting were approved.

2. AMENDMENTS TO AGENDA

There were no amendments to the agenda.

3. INFORMATIONAL REPORTS

State Personnel Director's Report

The director reported that eight unclassified positions were established and five were abolished across seven departments. Details on the positions, departments, and titles are in the report.

Since the last meeting, notice was given in SPDOCs 20-09, 20-10, 20-11, 20-12, 20-13, and 20-14 of amendments to regulations 2.03, 5.02, 5.10, and 5.18. These amendments were all effective on the date of issuance, except for SPDOCs 20-11, 20-13, and 20-14, which were effective October 1, 2020.

4. UNFINISHED BUSINESS

There was no unfinished business.

5. NEW BUSINESS

A. Travel Regulations (Interim Approval Granted)

General Counsel John Gnodtke summarized that Item 5-A was previously approved at the request of DTMB Vehicle and Travel Services for a two-cent increase in the standard mileage rate. Other reimbursement rates remain unchanged.

On motion duly made and supported, Agenda Item 5-A was unanimously approved.

B. MCSC Budget Resolutions

Amy Pung, Director of the Office of Financial and Administrative Services presented information on the FY20 Aggregate Payroll Certification and FY22 Commission Budget.

Amy noted that the total aggregate payroll is \$5,892,583,471. That is a 1% increase from last year. The certified aggregate payroll numbers are not finalized. If there are changes, she will notify the director for any interim approval for a modified certification before the next commission meeting.

On motions duly made and supported, Resolutions 5-B(1) and 5-B(2) were unanimously approved.

C. Memorandum of Understanding on Retiree Insurances (Interim Approval Granted)

General Counsel Gnodtke summarized that interim approval was previously granted to extend cost-sharing waivers for COVID-19 related treatments through the end of the calendar year for state employee retiree programs. This revision was consistent with what Blue Cross offered for other plans and with changes for state public school retirees. Chair McClelland noted that she was a state retiree.

On motion duly made and supported, Agenda Item 5-C was unanimously approved.

D. Coordinated Compensation Panel Recommendation

General Counsel Gnodtke summarized that the Coordinated Compensation Panel (CCP) provided its recommendation for NERE pay rates for FY 2022. The majority recommended the same 2% and 1% increases for October 2021 and April 2022 that are contained in previously approved collective bargaining agreements. A dissent recommended no increases based on uncertainty over the current public-health situation and its effects on the state budget. The majority acknowledged those concerns, but approved the Office of the State Employer (OSE) proposal given its conservative budgetary assumptions and the ability of the legislature and administration to later reconsider them as provided in the state's constitution and civil service rules. The OSE indicated its support for the CCP recommendation.

Commissioner Barrett made a motion to adopt both the majority recommendation of the CCP and the following statement about its action:

While the dissent raises important concerns given the uncertainty of COVID-19's future effects on the public health and the state's budgetary situation, the administration has affirmed its confidence under current conservative budget forecasts in its ability to fund the additional cost for the pay raises in the CCP recommendation. In adopting the majority's recommendation, the commission recognizes two important opportunities for the people's elected representatives to adjust the recommendation if future developments make the raises unsustainable. First, the constitution provides the legislature a 60-day window this spring after the governor presents the raise in her budget to reject or to reduce them. Second, the commission's rules also provide that the governor may declare the budgetary emergency before next October and ask the commission to reject or reduce the raises. The commission trusts that elected officials will learn more about the budget situation over the coming months and make any necessary responses. Today's action both allows more time to determine whether the

current budget forecasts will hold and ensures that employees are treated similarly so any sacrifice is shared by all state employees.

Peter Neu, general counsel for the Michigan Association of Governmental Employees (MAGE), commented in support of the CCP recommendation. He noted long-lasting problems fostered by actions in 2010 when NEREs did not receive raises that represented employees did. Mr. Neu referenced that as a labor relations representative then he answered numerous calls from NEREs about the failure to get a raise. The inequity negatively affected employee morale. As we ask more from our state employees during the current crisis, overburdened, overworked, and overwhelmed should be recognized as the CCP recommends.

On motion duly made and supported, Agenda Item 5-D was unanimously approved with Commissioner Barrett's statement.

E. Unclassified Pay Recommendation Resolution

General Counsel Gnodtke summarized that Article XI, § 5 of the state constitution requires the commission to annually make a non-binding recommendation on unclassified pay. Consistent with previous years, resolution 5-E recommends potential increases up to the amounts authorized for classified employees—2% effective October 1, 2021 and up to 1% in April of 2022.

On motion duly made and supported, Resolution 5-E was unanimously approved.

F. Letters of Understanding (Interim Approval Granted)

- 1. Union Use of State's Email System (UAW)**
- 2. RN Overtime Pilot at CFP (UAW)**
- 3. COVID-19 Sick Leave Pilot for Facility Staff DMVA & DOC (AFSCME, MSEA, SEIU)**
- 4. COVID-19 Sick Leave Pilot for Facility Staff DHHS (AFSCME, MSEA, SEIU)**
- 5. Paid Parental Leave (AFSCME, MCO, MSEA, MSPTA, SEIU, UAW)**
- 6. LPN Overtime Pay at Caro Center (AFSCME)**

General Counsel Gnodtke explained that these six items are several letters of understanding addressing use of the state's email system, sick leave related to the current public-health situation, paid parental leave, and overtime pay. Interim approval was previously granted for all of the LOUs. Staff has reviewed them and identified no implicated prohibited subjects of bargaining.

On motion duly made and supported, all LOUs included in Agenda Item 5-F were unanimously approved.

G. Election of Vice-Chair

General Counsel Gnodtke explained that with the expiration of the vice-chair's term on December 31, there will be a vacancy in this office. Chair McClelland thanked Commissioner Barrett for his work with the commission.

On motion duly made and supported, Jase Bolger was unanimously elected vice-chair.

6. PUBLIC COMMENT

There was no public comment.

ADJOURNMENT

There being no further items for Commission approval or public comments, Chair McClelland called for a motion to adjourn. On motion duly made and supported, the meeting was adjourned at 10:29 a.m.

These minutes will become final upon approval by the Civil Service Commission.