



STATE PERSONNEL DIRECTOR OFFICIAL COMMUNICATION

SPDOC No. 20-06

TO: ALL APPOINTING AUTHORITIES, HUMAN RESOURCES OFFICERS,
AND RECOGNIZED EMPLOYEE ORGANIZATIONS

FROM: JANINE M. WINTERS, STATE PERSONNEL DIRECTOR

DATE: JUNE 5, 2020

SUBJECT: **PROPOSED AMENDMENTS TO RULE 6-7, DUES AND SERVICE FEES**

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In 2015, the Michigan Supreme Court held in *UAW v Green* that the commission could not include agency-shop fee provisions under Michigan's Constitution. In response, the commission amended rule 6-7 to (1) strike provisions allowing union contracts to require payment of service fees and (2) require a current voluntary written authorization to allow deduction of dues or fees. Prior authorizations for dues deductions were treated as valid under both the amendments passed in 2015 and other reforms adopted in 2017.

In 2018, the Supreme Court of the United States held in *Janus v AFSCME, Council 31*, that agency-shop fees also raised First Amendment concerns by presuming waivers of those constitutional rights without clear and compelling evidence of a freely given waiver.

While the reforms adopted in 2017 and implemented in 2019—which centralized authorization of dues and fees and allowed employees to grant or withdraw authorization anytime—addressed many concerns raised by *Janus*, commissioners have asked staff to draft and circulate other related potential amendments for public comment.

Notice of Rights and Reauthorization of Dues and Fees:

The commission has accepted prior authorizations for payroll deduction of dues and fees, dating back to the introduction of collective bargaining. Some current authorizations were submitted decades ago when employees were unaware of later developments in *Green* and *Janus*. Most current service-fee payers submitted authorizations while legally compelled to pay either that fee or higher dues. The *Janus* court held that “nonmembers are waiving their First Amendment rights, and such a waiver cannot be presumed,” that employees must “affirmatively consent,” and that the waiver “must be freely given and shown by ‘clear and compelling’ evidence.”

Ongoing deduction of fees based on old authorizations is problematic. To ensure both that employees know their rights and the validity of these authorizations, commissioners

have asked staff to draft rule amendments to require (1) ongoing provision of notice to employees of their rights and (2) reauthorization of both fees—as required by *Janus*—and dues—under the same logic given the large number of pre-*Green* and pre-*Janus* authorizations still in place. Commissioners have also requested draft rule amendments to ensure continuing, knowing, and voluntary consent to deductions of dues and fees by requiring annual reauthorization for these payroll deductions.

Discontinuing Service Fees:

Service fees were created when judicial decisions required an alternative to union dues so that employees were only required to pay costs necessary for a union to perform its duties as exclusive representative without being required to subsidize other unrelated costs, including political expenditures. Now that agency-fee arrangements are not permitted, there is no longer a need to offer such an alternative. Commissioners have asked staff to draft rule amendments sunsetting the collection of service fees at the end of current collective bargaining agreements.

Proposed Amendments:

6-7 Dues and Service Fees

6-7.1 Payroll Deduction

If 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. An appointing authority cannot deduct membership dues or service fees unless the employee has made a voluntary authorization, which shall be retained while relied upon to authorize deductions. Effective January 1, 2022, the state shall not deduct service fees by payroll deduction.

6-7.2 Authorization and Notice

The director shall establish the exclusive process for employees to authorize or deauthorize deduction of dues or fees. Effective September 1, 2020, an authorization will expire if not authorized or reauthorized during the previous year. The director shall provide annual notice to all exclusively represented employees of the right to join or not join an exclusive representative without affecting employment status, the right not to maintain membership in an exclusive representative to retain employment, an exclusive representative's duty of fair representation to all bargaining-unit members, and the prohibition on union activities during actual-duty time.

Comments on the proposed amendments may be sent to MCSC-OGC@mi.gov or Office of the General Counsel, Michigan Civil Service Commission, P.O. Box 30002, Lansing, Michigan, 48909. Comments must be received by July 6, 2020.