

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA (UAW), AFL-CIO AND UAW
LOCAL 6000; MICHIGAN CORRECTIONS ORGANIZATION,
LOCAL 526M, SERVICE EMPLOYEES INTERNATIONAL
UNION; MICHIGAN PUBLIC EMPLOYEES LOCAL 517M,
SERVICE EMPLOYEES INTERNATIONAL UNION;
MICHIGAN STATE EMPLOYEES ASSOCIATION (MSEA),
LOCAL 5 AMERICAN FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES, AFL-CIO; COUNCIL 25,
AMERICAN FEDERATION OF STATE, COUNTY AND
MUNICIPAL EMPLOYEES, AFL-CIO; and
MICHIGAN STATE AFL-CIO,

Plaintiffs,

Case No.

v.

Hon.

JANET McCLELLAND; JAMES BARRETT;
JASE BOLGER; and JEFF STEFFEL, in their
individual capacities as Civil Service Commission
members,

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs International Union, United Automobile, Aerospace and
Agricultural Implement Workers Of America (UAW), AFL-CIO and
UAW Local 6000; Michigan Corrections Organization, Local 526M,

Service Employees International Union (SEIU); Michigan Public Employees Local 517M, Service Employees International Union; Michigan State Employees Association (MSEA), Local 5 American Federation of State, County and Municipal Employees, AFL-CIO; Council 25, American Federation of State, County and Municipal Employees, AFL-CIO; and Michigan State AFL-CIO, complain against Defendants Janet McClelland, James Barrett, Jase Bolger and Jeff Steffel, as follows:

INTRODUCTION

1. This is an action for injunctive and declaratory relief to avert impairment of Plaintiffs Unions' and their classified employee members' constitutional rights arising from the Michigan Civil Service Commission's recent approval of new changes to its Rules. The new Rule amendment removes the members' ability to authorize continuing deduction of their membership dues in order to maintain their rights as union members in good standing until the authorization is revoked or terminated under conditions set forth in Plaintiff Union's agreements with the State. Under the new rule, Plaintiff Unions' members must

reauthorize dues deductions every year in order for them to continue. Reauthorizations must be submitted within the few weeks before this October 4th, or dues deductions will end until a reauthorization is submitted.

The Rule change substantially impairs Plaintiff Unions' collective bargaining agreements, which are in effect until January 1, 2021, without any legitimate public purpose, in violation of the Contracts Clause of the U.S. Constitution. And it infringes on the First Amendment right of association by making it significantly more difficult for employees to maintain their union membership in good standing, and nearly impossible for Plaintiff Unions to inform and assist their members in reauthorizing their voluntary deduction within the next few weeks – particularly in the midst of an unprecedented health emergency.

There is no legally supportable reason for this change in the Commission Rules. Plaintiff Unions and, we believe, many of their members, have come to the unavoidable conclusion that the Commission's action was motivated by hostility towards unions. There is no other convincing explanation for the Commission's actions.

JURISDICTION AND VENUE

2. This court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1343(a)(3) because this action presents a federal question, and under 42 U.S.C. § 1983 because this action seeks to redress the deprivation, under color of state law, of rights secured by the Constitution and laws of the United States, and under 28 U.S.C. §§ 2201 and 2202, because this action seeks declaratory relief.

3. Venue is proper in this District under 28 U.S.C. §1391(b)(2) and Local Rule 83.10.

PARTIES

The Plaintiffs

4. Plaintiff International Union, United Automobile, Aerospace and Agricultural Implement Workers Of America (UAW), AFL-CIO is a voluntary unincorporated association and a labor union with its principal offices at 8000 E. Jefferson Ave. in Detroit, Michigan, and its Local 6000 is a voluntary unincorporated association and a labor union with its principal offices at 3350 N. Grand River, Lansing, Michigan (collectively “UAW”). Plaintiff UAW is the exclusive collective bargaining

representative for certain employees in the Michigan civil service.

5. Plaintiff Michigan Corrections Organization, Local 526M, Service Employees International Union (SEIU) (“MCO”) is a voluntary unincorporated association and a labor union with its principal offices at: 421 W. Kalamazoo, Lansing, Michigan. MCO is the exclusive collective bargaining representative for certain employees in the Michigan civil service.

6. Plaintiff Michigan Public Employees Local 517M, Service Employees International Union (“Local 517M”) is a voluntary unincorporated association and a labor union with its principal offices at 1026 E. Michigan Avenue, Lansing, Michigan. Local 517M is the exclusive collective bargaining representative for certain employees in the Michigan civil service.

7. Plaintiff Michigan State Employees Association, Local 5 American Federation of State, County and Municipal Employees, AFL-CIO (“MSEA”) is a not for profit corporation and a labor union with its principal offices at 6035 Executive Drive, Suite 204, Lansing, Michigan. MSEA is the exclusive collective bargaining representative for

certain employees in the Michigan civil service.

8. Plaintiff Council 25, American Federation of State, County and Municipal Employees, AFL-CIO (“Council 25”) is a voluntary unincorporated association and a labor union with its principal offices at 1034 N. Washington Avenue, Lansing, Michigan. Council 25 is the exclusive collective bargaining representative for certain employees in the Michigan civil service.

9. Plaintiff Michigan State AFL-CIO (“Michigan AFL-CIO”) is a voluntary unincorporated association and a labor federation comprised of constituent labor organizations in Michigan, with its principal office at 419 South Washington Square, Lansing, Michigan. The Michigan AFL-CIO’s affiliated labor organizations represent hundreds of thousands of employees in Michigan, including employees in the Michigan classified civil service. A primary objective of the Michigan AFL-CIO is to improve the quality of life for working families in Michigan.

The Defendants

10. Defendant Janet McClelland is the Chairperson of the Michigan Civil Service Commission and she is sued in her official capacity.

11. Defendant James Barrett is sued in his official capacity as a member of the Michigan Civil Service Commission.

12. Defendant Jase Bolger is sued in his official capacity as a member of the Michigan Civil Service Commission.

13. Defendant Jeff Steffel is sued in his official capacity as a member of the Michigan Civil Service Commission.

BACKGROUND FACTS

14. Plaintiffs McClelland, Barrett, Bolger and Steffel comprise the four members of the Michigan Civil Service Commission (“Commission”). The Commission was established under Article 11, § 5 of the Michigan Constitution of 1963 and is charged with the duty to: “classify all positions in the classified service according to their respective duties and responsibilities, fix rates of compensation for all classes of positions, approve or disapprove disbursements for all personal

services, determine by competitive examination and performance exclusively on the basis of merit, efficiency and fitness the qualifications of all candidates for positions in the classified service, make rules and regulations covering all personnel transactions, and regulate all conditions of employment in the classified service.”Plaintiffs UAW, MCO, Local 517M, MSEA and Council 25 (collectively “Plaintiff Unions”) are parties to collective bargaining agreements with the State of Michigan. The agreements all are in effect for the term beginning January 1, 2019 and ending on December 31, 2021, and all were approved by the Commission in December, 2018, shortly before they went into effect.

15. All of the agreements contain provisions that obligate the State employer to make payroll deductions for membership dues payments on behalf of employees in the bargaining units represented by Plaintiff Unions, provided that the employee has authorized the deduction.

16. Under the agreements, an employee who has authorized dues deduction can revoke his or her authorization at any time. The

agreements provide that the dues deductions continue in effect until an employee has revoked his or her authorization or until the occurrence of certain other events specified in the agreements.

17. The agreements also provide for deduction and payment of voluntary non-member service fees to Plaintiff Unions on behalf of employees who are not members, under the same terms and conditions regarding employee authorization.

18. On June 5, 2020 the Commission released State Personnel Director Official Communication (“SPDOC”) No. 20-06, entitled “Proposed Amendments to Rule 6-7, Dues and Service Fees.” (Ex.) In SPDOC 20-06 the Commission proposed changes to two of its Rules regarding payroll deduction:

- (a) Commission Rule 6-7.1 “Payroll Deduction” which provides for payroll deduction of union membership dues or service fees conditioned on voluntary authorization by the employee, was amended to discontinue deduction for service fees altogether, effective upon expiration of the current CBAs on December 31, 2021.

(b) Commission Rule 6-7.2 “Authorization and Notice” was amended as follows (additional language in bold):

The (State Personnel) director shall establish the exclusive process for employees to authorize and 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.**

This new language required employees to reauthorize union dues deduction annually, and would automatically terminate deduction for any employee who did not authorize deductions in the preceding year. It also required an annual notice to union-represented employees of their right not to be members of the union.

19. On June 26, 2020, the Commission released SPDOC No. 20-08, entitled “Clarification on Proposed Amendments to Rule 6-7, Dues

and Service Fees.” SPDOC No. 20-08 replaced the added language in Rule 6-7.2 “Authorization and Notice” with the following:

An authorization will expire at the start of the first full pay period each fiscal year unless it was authorized or reauthorized during the previous fiscal 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.

The new language still requires each member to reauthorize deductions annually in order for deductions to continue, but all employees would be on the same fiscal year reauthorization timetable.

20. Plaintiff Unions submitted written comments to the Commission opposing the proposed amendment.

21. The Commission conducted a meeting on July 13, 2020, to consider and vote on the proposed Rule amendments in SPDOC 20-06 and 20-08. Representatives and members of Plaintiff Unions voiced their opposition at the meeting. The Commission voted 3 to 1 (Chairperson

McClelland dissenting) to adopt in their entirety the Rule changes set forth in SPDOC 20-06 as modified in SPDOC 20-08.

COUNT I

VIOLATION OF THE CONTRACTS CLAUSE OF THE U.S. CONSTITUTION

22. The Contracts Clause of the United States Constitution, Article 1, § 10, clause 1, provides in pertinent part that: “No State shall . . . Pass any . . . Law impairing the Obligation of Contracts.”

23. The Rule amendment substantially impairs Plaintiff Unions’ agreements with the State. Various provisions of the agreements require the employer to continue payroll deduction of an employee’s voluntary union dues after authorization by the employee. For example, typical contract language states: “Upon receipt of an authorization from any of its employees covered by the Agreement, currently being provided by the Union and approved by the Civil Service Commission, the Employer will deduct from the pay due such employees those dues and initiation fees required to maintain the employee's membership in the Union in good standing.” The agreements specify the circumstances under which

deductions will stop, including revocation of the deduction authorization by the employee, but they do not provide for, permit or in any way contemplate automatic annual expiration. Other provisions obligate the employer “to continue to provide payroll deductions for employees [for] Union Dues/Fees . . .,” and further state: “Once commenced a deduction authorized by the employee shall continue until the appropriate stop order is received.”

24. The agreements also provide in several places that the employer’s contractual obligations stated therein override a conflicting Commission rule, for example:

Except as otherwise provided in the Civil Service Rules and Regulations, where any provision of this Agreement is in conflict with any current Commission Rule or Provision of the Compensation Plan regarding a proper subject of bargaining, the parties will regard Commission approval of this Agreement as an expression of policy by the Commission that the parties are to be governed by the provisions of this Agreement.

25. The Commission’s abrogation of its agreements with the Plaintiff Unions by amending Rule 6-7.2 does not serve a significant and legitimate public purpose. The Commission cited as its rationale for immediate imposition of the annual re-authorization requirement the

Michigan Supreme Court decision in *UAW v. Green*, 498 Mich. 282 (2015), and the U.S. Supreme Court decision in *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448 (2018). Neither of those decisions provides even an arguable basis for abrogation of the contractual provisions governing employees' authorization of dues deductions and forfeiture of dues deduction for many employees who wish to maintain membership in and support for their unions. The *Green* and *Janus* decisions have no application to dues deductions for union members or voluntary service fee payments by non-members.

26. Moreover, *Green* and *Janus* were decided 5 years and 2 years before the Rule change. Shortly before the current CBAs were approved the Commission made changes to its Regulation 6.03(4)(C)(1), effective January 1, 2019, contemporaneously with the effective date of the CBAs, that expressly provided that “[v]alid payroll deduction cards in effect on December 31, 2018, provide authorization for continued deduction.”

27. Putting aside the lack of a significant public purpose for the Rule change, the Commission's compressed timetable for immediate

implementation of the Rule change is patently unreasonable and oppressive.

28. Employees have two options for renewing their authorizations. The State's on-line employee portal, "MICSC HR Gateway," with which employees should be able to authorize or reauthorize deductions, was not set up to do so until August 6, 2020, and a number of failures and bugs continued after that date. The MICSC HR Gateway still remains slow and unreliable, and it is not accessible for all employees; it is closed for maintenance at least 8 days per month. A Human Resources Call Center through which employees can authorize union dues deductions on the telephone is only open between 8:00 a.m. and 5:00 p.m. on week-days; it is under-staffed and wait times are very long, making it very difficult for many employees to use the Call Center during work hours.

29. The Commission's action left Plaintiff Unions with a little over eleven weeks to communicate with a combined dues-paying membership of just under 25,000 employees regarding the fact that their

membership dues deductions will end on October 4, 2020, unless they re-authorize deductions before that date.

30. Under normal circumstances this extremely short timetable would present a formidable burden on Plaintiff Unions. But the circumstances are not normal. The burden imposed on Plaintiff Unions and their members is magnified by the COVID-19 pandemic. The unions depend on stewards present in the worksites and on workplace visits and meetings by union representatives to stay in touch with their members. The current health crisis makes it difficult if not impossible for union representatives to meet face-to-face with members at job sites. Many workers have been ordered or have chosen to perform their jobs remotely, and the Unions cannot possibly reach out to thousands of members at their homes or at remote locations. Moreover, the members themselves, who include corrections officers, medical services workers, and human services personnel, are overwhelmed with COVID-related concerns on the job and at home.

31. The Plaintiff Unions must continue providing their regular member services but now must divert significant time and resources to

dealing with coronavirus-related issues facing the employees. Defendants have now added the additional and wholly unnecessary burden of informing, communicate with and assisting tens of thousands of members in reauthorizing payroll deductions before October 4th. The Plaintiff Unions have had to mount an extensive communications campaign so that their members are aware of the need to reauthorize deductions and how they go about doing so, while continuing to perform their member service functions, which are in more demand during the current COVID-19 crisis. While the Unions have found that face-to-face contact at the workplace or in meetings is the most effective method for communicating with members about such a change, that option is all but impossible while the pandemic continues.

COUNT II

VIOLATION OF THE FREEDOM OF SPEECH AND ASSOCIATION UNDER THE FIRST AND FOURTEENTH AMENDMENTS TO THE U.S. CONSTITUTION

32. The First Amendment protects classified employees' right to associate and act in concert with others through membership in a labor union, as well as the Plaintiff Unions' and their members' right to speak

and petition the government through a voluntary membership association.

33. Over many years the members of Plaintiff Unions have depended on voluntary payroll deduction to secure continued membership in good standing in their union.

34. Membership in good standing is a prerequisite to employees' ability to fully participate in the affairs of their union, including, *inter alia*, the ability to vote on contract ratification; vote in elections for union officers and representatives, and to run for those positions; and attend union meetings and social events.

35. The Commission's Rule change will immediately disenfranchise many employees from the ability to maintain membership in their union.

36. As stated above, the Rule change does not serve any important or substantial governmental interest.

37. Rather than protecting employees' First Amendment rights to decide whether to financially support their union, the Rule change is intended to and will have the effect of placing an unnecessary obstacle in

the way of employees who wish to exercise their First Amendment right to participate in and financially support their union.

38. Even if the Commission could articulate an important or substantial purpose for the amendment, the Rule change and its implementation would not be sufficiently narrowly-tailored to achieve such a purpose, as required by the First Amendment. In fact, the Commission could not have selected a more burdensome and speech-suppressing course of action. The Commission's impossibly accelerated timetable will guarantee that many employees will forfeit continuation of the dues deductions they already have voluntarily authorized.

**PLAINTIFFS SATISFY THE REQUIREMENTS FOR
IMMEDIATE INJUNCTIVE RELIEF**

39. Given the impossibly short time given for Plaintiff unions to inform and communicate with their members about the immediate need to reauthorize payroll deduction, employees face an immediate obstacle to exercising of their right of association by maintaining membership in their union. Irreparable harm is found *per se* when First Amendment rights are threatened.

40. Plaintiff labor unions also face imminent and irreparable harm from the impairment of their existing collective bargaining agreements.

41. The court cannot provide an adequate or commensurate remedy for the Commission's constitutional violations through monetary damages.

42. Balancing the equities favors issuance of an injunction. Granting of an injunction as requested herein will further the public interest by protecting and effectuating the constitutional rights of Plaintiff Unions and their members.

RELIEF REQUESTED

Plaintiffs request that the Court:

- A. Declare that the Commission's promulgation and application of Michigan Civil Service Commission Rule 6-7.2 as amended on July 13, 2020, violates the Contracts Clause of the U.S. Constitution and the First Amendment right to freedom of speech and association;
- B. Issue a temporary restraining order and/or a preliminary injunction, and a permanent injunction, enjoining Defendants, their

agents, and those acting in concert or cooperation with them, from implementing or enforcing Michigan Civil Service Commission Rule 6-7.2 as amended on July 13, 2020;

C. Order Defendants to reimburse Plaintiffs for their reasonable attorneys' fees and costs in bringing this action, pursuant to 42 U.S.C. § 1988; and

D. Grant such other relief as the Court deems just and proper.

Respectfully submitted,

Nickelhoff & Widick PLLC

s/Andrew Nickelhoff

By: Andrew Nickelhoff (P37990)

s/Marshall J. Widick

By: Marshall J. Widick (P53942)

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Dated: September 3, 2020

CERTIFICATE OF SERVICE

ANDREW NICKELHOFF, being first duly sworn, deposes and says that on September 3, 2020, he did electronically file this Complaint with the Court Clerk via the ECF system, which will provide notice and service of such documents upon the parties through counsel of record.

/s/Andrew Nickelhoff

ANDREW NICKELHOFF