



Legislature Should End Abusive Public-Sector Unionizations

By Patrick J. Wright

(Editor's note: A version of this commentary appeared Aug. 14, 2011, in the Detroit Free Press.)

Summary

The Michigan Legislature should pass a law clarifying that private contractors and business owners who receive indirect state subsidies are not public employees and cannot be forced into public-employee unions.

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The Michigan Employment Relations Commission — a government employment regulatory agency that usually flies below the radar — made a correct and important decision last month by declining to recognize graduate student research assistants at the University of Michigan as public employees subject to unionization. But MERC and other state agencies have acted imprudently in similar situations. The Michigan Legislature must clarify the boundaries of public-employee unionization or risk further damage to Michigan's civil liberties and economic future.

In its decision, MERC rejected a request by the Graduate Employees Organization, a public-sector union, to organize U of M graduate students who assist in performing research financed primarily through federal grants received by university faculty. This decision to disallow the unionization should have been a foregone conclusion. In 1981, after 19 days of hearings, thousands of pages of exhibits and hundreds of pages of legal briefing, MERC had told this very union that this same category of U of M graduate students could not be unionized because they were not public employees under Michigan labor law.

But in fact, last month's outcome was in doubt. Months had passed since the union had filed its representation petition, and MERC had been proceeding as if its 1981 decision did not exist. Days before MERC's decision, the Graduate Employees Organization had boasted that it expected its request to be ratified shortly. And even as MERC rejected mandatory collective bargaining for the students on Monday, it offered to facilitate — apparently at public expense — a nonbinding union election for the students in question.

MERC has also erred when presented with other dubious public-sector unionization proposals. In 2006, MERC permitted union elections for some 40,000 business owners and other providers of home-based day care services, effectively accepting the argument that these private-sector contractors were “public employees” because they received small, indirect federal subsidies through the state when caring for low-income children. In 2005, MERC accepted a similar unionization of some 41,000 home-based health care aides who likewise receive indirect federal



The Mackinac Center Legal Foundation represented Melinda Day, a graduate student research assistant, in a case aimed at preventing an illegal unionization scheme at the University of Michigan. For more information, please see www.mackinac.org/15525

subsidies through the state. In both cases, so-called “union dues” have been withheld by the state and redirected to union coffers.

In fairness, MERC is hardly the only state agency that has made bad calls. With the graduate student research assistants, a politically divided University of Michigan Board of Regents passed a resolution supporting a union election for the students, disregarding the settled law on the issue and the objections of the university’s president. With the home-based day care providers and home health care providers, the Michigan Department of Human Services and the Michigan Department of Community Health, respectively, entered into “interlocal” agreements containing illegal provisions that permitted shell corporations to serve as these private workers’ “public employers.”

These abuses of government power matter. Although the home day care unionization has since been rescinded by the Department of Human Services, the arrangement lasted for five years, and the home health care unionization inexplicably continues. Such blanket unionizations of private individuals are fundamentally unfair to the tens of thousands of private-sector contractors and business owners who do not see their homes as union shops and who are trying to support themselves by providing important services to low-income and vulnerable populations. Questionable unionizations reinforce the widely held perception among job providers that Michigan is captive to union interests and hostile to business.

Under the Michigan Constitution, it is the state Legislature — not state agencies or the boards of public universities — that defines who is a public employee and can therefore be unionized under state labor law. At the very least, the Legislature should pass a law clarifying that private contractors and business owners who receive indirect state subsidies are not public employees and cannot be organized into public-employee unions. Failing to act will leave the state’s residents and business owners in perpetual doubt about their government, their freedom and the state’s economic future.

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