STATE OF MICHIGAN
IN THE COURT OF CLAIMS

TAMERA MARTIN, an individual, and RICHARD SULLIVAN, an individual,

Plaintiffs,

v

MICHIGAN EMPLOYMENT RELATIONS COMMISSION (MERC), a state government agency, TINAMARIE PAPPAS, MERC Chairperson (in her official capacity), WILLIAM F. YOUNG, MERC Commissioner (in his official capacity), ROBERT L. CHIARAVALLI, MERC Commissioner (in his official capacity), MICHIGAN DEPARTMENT OF LABOR AND ECONOMIC OPPORTUNITY (LEO), a state government agency, and SUSAN CORBIN, LEO Director (in her official capacity),

Defendants,

and

SEIU HEALTHCARE MICHIGAN,

Intervenor Defendant.

Case No. 25-000124-MM

HON. BROCK A. SWARTZLE

09/12/2025 MOTION FOR SUMMARY DISPOSITION UNDER 2.116(C)(8) AND (C)(10)

ORAL ARGUMENT REQUESTED

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DEFENDANTS' SEPTEMBER 12, 2025 MOTION FOR SUMMARY DISPOSITION UNDER MCR 2.116(C)(8) and (C)(10)

For the reasons set forth in the accompanying brief, Defendants MERC, MERC Chairperson Tinamarie Pappas (in her official capacity), MERC Commissioner William F. Young (in his official capacity), MERC Commissioner Robert Chiaravalli (in his official capacity), Michigan Department of Labor and Economic Opportunity (LEO), and LEO Director Susan Corbin (in her official capacity) (collectively, "Defendants"), through counsel, respectfully request that this Court enter an order under MCR 2.116(C)(8) and MCR 2.116(C)(10) granting Defendants' motion for summary disposition.

Pursuant to Court of Claims LCR 2.119(6), Defendants further request the opportunity to provide oral argument on the significant legal issues presented herein, as oral argument may assist the Court in its deliberations.

Pursuant to Court of Claims LCR 2.119(A)(2), on September 10, 2025, the undersigned counsel sought concurrence from Plaintiffs' counsel via e-mail for the

relief sought in this motion, and that concurrence was denied. Therefore, it is necessary to present this motion.

Defendants respectfully request that this Court:

A. Conduct oral argument on Defendants' motion;

B. Grant Defendants' motion in its entirety; and

C. Grant Defendants such other relief as this Court deems just and proper.

Respectfully submitted,

/s/ Bryan Davis, Jr.

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Dated: September 12, 2025

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09/12/2025 BRIEF IN SUPPORT OF MOTION FOR SUMMARY DISPOSITION

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BRIEF IN SUPPORT OF DEFENDANTS' SEPTEMBER 12, 2025 MOTION FOR SUMMARY DISPOSITION UNDER 2.116(C)(8) and (C)(10)

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TABLE OF CONTENTS

INDEX OF AUTHORITIES

Page

Cases

Statutes

Rules

Constitutional Provisions

INTRODUCTION

The Michigan Civil Service Commission (MCSC) possesses broad jurisdiction over the state civil service; however, such jurisdiction exists only within its limited sphere of authority. Here, two home help caregivers subject to the challenged public acts 2024 PA 144 and 2024 PA 145 (collectively, the "Acts") do not fall within that authority. To the contrary, the Acts only grant collective bargaining rights and not any of the other indicia of state civil service. In the plainest of text, the Legislature has not created new state employees subject to the MCSC's authority.

Despite the plain language of the Acts, Plaintiffs erroneously ask this Court to expand the MCSC's authority beyond its constitutional mooring to cover those who are not civil servants. Moreover, Plaintiffs claim violation of their right to freedom of association under the First Amendment. That too is wrong, as Plaintiffs likewise ask this Court to extend First Amendment doctrine deep into uncharted territory, well beyond the narrow limitations imposed by the two Supreme Court decisions barring compelled fees to public sector unions. This Court should not take the invitation to break novel constitutional ground. Finally, Plaintiffs have failed to state enforceable claims against Commissioners Pappas, Young, and Chiaravalli, LEO, and Corbin as none of these defendants possess statutory authority to enforce the Acts. For these reasons, Defendants respectfully ask this Court to grant Defendants' motion and dismiss Plaintiffs' verified complaint with prejudice.

RELEVANT FACTUAL BACKGROUND

The existing legal backdrop prior to passage of the Acts.

Relevant to this proceeding, the Michigan Constitution established the classified civil service:

> The classified state civil service shall consist of all positions in the state service except those filled by popular election, heads of principal departments, members of boards and commissions, the principal executive officer of boards and commissions heading principal departments, employees of courts of record, employees of the legislature, employees of the state institutions of higher education, all persons in the armed forces of the state, eight exempt positions in the office of the governor, and within each principal department, when requested by the department head, two other exempt positions, one of which shall be policy-making. The civil service commission may exempt three additional positions of a policymaking nature within each principal department. [Const 1963, art 11, § 5.]

Section 5 also states that "[v]iolation of any of the provisions hereof may be restrained or observance compelled by injunctive or mandamus proceedings brought by any citizen of the state." *Id*. Relatedly, article 4, § 48 allows the Legislature to "enact laws providing for the resolution of disputes concerning public employees, except those in the state classified civil service," and § 49 provides that "[t]he legislature may enact laws relative to the hours and conditions of employment." Const 1963, art 4, §§ 48–49.

Michigan's Public Employment Relations Act (PERA), first enacted in 1947, protects the collective bargaining rights of certain public employees. Specifically, PERA provides that:

> Public employees may organize together or form, join, or assist in labor organizations; engage in lawful concerted activities for the purpose of collective negotiation or bargaining or other mutual aid and protection;

> or negotiate or bargain collectively with their public employers through representatives of their own free choice. [MCL 423.209.]

PERA also details election procedures and the Michigan Employment Relations Commission's (MERC) authority to direct elections and certify the results of such elections. See MCL 423.212.

The Acts grant collective bargaining rights to home help caregivers.

In 2024, Governor Whitmer signed the Acts into law to ensure individual home help caregivers possessed collective bargaining rights over certain terms and conditions of their employment. Specifically, 2024 PA 144 classifies caregivers as public employees of the director of the Michigan Department of Health and Human Services (DHHS) for the sole purpose of collective bargaining. MCL 400.804(1).

Further, 2024 PA 144 "does not require or provide for the treatment or classification of individual home help caregivers as public employees for any other purpose, and the department's role as employer solely for the purposes of collective bargaining does not serve as a basis to establish an employer-employee relationship." *Id.* In addition, individual home help caregivers are not considered employees of the state or political subdivisions of the state for any purpose other than collective bargaining. *Id.* Notably, 2024 PA 144 states that caregivers are not subject to the provisions of article 11, § 5 of the Michigan Constitution. *Id.*

Next, 2024 PA 145 removed PERA's language prohibiting caregiver rights to collective bargaining and amended PERA's definition of "public employee" to bring into its purview "an individual designated by the legislature as a public employee."

MCL 423.201(1)(e)(ii), as amended by 2024 PA 145. This designation is strictly for the purposes of collective bargaining, however. *Id*.

MERC receives SEIU's petitions for an election.

On April 16, 2025, MERC received a Certification of Representation petition from the Service Employees International Union Healthcare of Michigan (SEIU) for an election authorized by the Acts. The petition includes "all individual home help caregivers selected by a participant or the participant's representative, who provides individual home help services to a participant." This petition was assigned MERC case number 25-D-0699-RC. On June 27, 2025, SEIU withdrew this petition and filed a new, similar petition that was assigned case number 25-F-1170-RC. This is the only active election case.

Plaintiffs file suit.

Following MERC's receipt of the petitions, Plaintiffs filed suit alleging violations of the Michigan and US Constitutions. Plaintiffs moved for a preliminary injunction and a writ of mandamus to enjoin Defendants from certifying the election identifying the SEIU as the exclusive representative of the caregivers. Defendants responded to Plaintiffs' motion, detailing Plaintiffs' failure to satisfy the applicable elements necessary to justify the extraordinary remedy of a preliminary injunction and failure to meet their burden for mandamus relief. A decision on Plaintiffs' motion is pending.

On August 20, 2025, SEIU moved to intervene as a defendant, and this Court granted SEIU's motion.

STANDARD OF REVIEW

Defendants move under MCR 2.116(C)(8) and (C)(10). "A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint." *Maiden v Rozwood*, 461 Mich 109, 119 (1999). The factual allegations, if well-pleaded, are to be accepted as true and construed in favor of the non-moving party. *Id*. The court may only review the pleadings in deciding these motions. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 155 (2019); *Maiden*, 461 Mich at 119–120. Dismissal under MCR 2.116(C)(8) is proper "where the claims are so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Maiden*, 461 Mich at 119, quoting *Wade v Dep't of Corrections*, 439 Mich 158, 163 (1992).

Under MCR 2.116(C)(10), summary disposition is only appropriate when there is no genuine issue as to any material fact and the moving party is entitled to judgement or partial judgment as a matter of law. A court must determine whether a record could be developed that would leave open an issue upon which reasonable minds could differ. *Weakley v City of Dearborn Heights*, 240 Mich App 382, 385 (2000). And a court must examine the evidence in the light most favorable to the party opposing the motion. *Maiden*, 461 Mich at 119–120. The moving party bears the initial burden to specifically identify the undisputed factual issues and support its position with documentary evidence. *Id*. at 120; MCR 2.116(G)(3)(b); *Neubacher v Globe Furniture Rentals*, 205 Mich App 418, 420 (1994). The non-movant then has the burden of showing that a genuine issue of disputed fact does in fact exist and producing admissible evidence to establish those disputed facts. *Meagher v Wayne State Univ*, 222 Mich App 700, 719 (1997); *Neubacher*, 205 Mich App at 420.

"If the pleadings show that a party is entitled to judgment as a matter of law, or if the affidavits or other proofs show that there is no genuine issue of material fact, the court shall render judgment without delay." MCR 2.116(I)(1).

ARGUMENT

I. The Acts comport with the Michigan Constitution and do not infringe upon the jurisdiction of the MCSC.

Statutes are presumed to be constitutional, and courts are required "to construe a statute as constitutional unless its unconstitutionality is clearly apparent." *In re Request for Advisory Opinion Regarding Constitutionality of 2011 PA 38*, 490 Mich 295, 307 (2011), citing *Taylor v Gate Pharm*, 468 Mich 1, 6, (2003). Courts "exercise the power to declare a law unconstitutional with extreme caution, and [Courts] never exercise it where serious doubt exists with regard to the conflict." *Id.* at 307–308, citing *Phillips v Mirac, Inc*, 470 Mich 415, 422 (2004). "Every reasonable presumption or intendment must be indulged in favor of the validity of an act, and it is only when invalidity appears so clearly as to leave no room for reasonable doubt that it violates some provision of the Constitution that a court will refuse to sustain its validity." *Id.* at 308, citing *Phillips*, 470 Mich at 423. In addition, "the burden of proving that a statute is unconstitutional rests with the party challenging it." *Id.*, citing *In re Request for Advisory Opinion Regarding Constitutionality of 2005 PA 71*, 479 Mich 1, 11 (2007). Notably, a Court is not to inquire into the wisdom of legislation when considering a claim regarding a statute's constitutionality. *Id.* See also *Taylor*, 468 Mich at 6.

Unlike statutory interpretation, which considers the intent of the Legislature, "constitutional interpretation aims to determine the intent of the people who adopted the provision, and the rule of common understanding applies." *Birchwood Manor, Inc v Comm'n of Revenue*, 261 Mich App 248, 257 (2004); see also

Straus v Governor, 459 Mich 526, 533 (1999). "Common understanding" here refers to "the sense of the words used that would have been most obvious to those who voted to adopt the constitution." *Straus*, 459 Mich at 533.

A. The Legislature plainly chose to *not* designate home help caregivers as public employees, and affording them collective bargaining rights does not infringe upon the MCSC's jurisdiction.

The MCSC is an administrative agency derived from the Michigan Constitution. *Womack Scott v Dep't of Corrections*, 246 Mich App 70, 79 (2001). While Article 11, § 5 bestows upon the MCSC jurisdiction over the state civil service, and broad and exclusive authority to regulate the terms and conditions of employment for those within the service, the MCSC's power to promulgate rules and regulations must be consistent with the expressed powers and limitations set forth in the constitutional amendment itself. *Id.* See also *York v Civil Serv Comm*, 263 Mich App 694 (2004); *Reed v Civil Serv Comm*, 301 Mich 137 (1942).

With limited exceptions,[1] all positions in the state service make up the classified state civil service. Const 1963, art 11, § 5. However, there is no legal requirement that all who provide services on behalf of the state must be in a civil service position. *Mich State Employees Ass'n v Civ Serv Comm'n*, 141 Mich App 288, 293 (1985). Put differently, providing services for the state does not grant an individual civil service protections. *Id.* As such, possession of civil service status is not automatic. *Id.* See also *AFSCME, AFL CIO v Civ Serv Comm'n*, unpublished

[1] Some positions are expressly excluded by the constitution, such as elected officials, employees of the Legislature, and heads of principal departments. See Const 1963, art 11, § 5.

opinion per curiam of the Court of Appeals, issued July 5, 1996 (Docket Nos. 170606, 170893), p 2. The natural consequence, then, is that only those in the state classified service are subject to the MCSC's merit-based classification system. *Reed*, 301 Mich at 160.[2]

Here, individuals like Plaintiffs who have been deemed "public employees" for the limited purpose of collective bargaining have no right to be "blanketed in" to the state civil service. See *id*. Indeed, Plaintiffs have manufactured an argument that they are in the state civil service ostensibly so they may argue that such classification is unconstitutional. But nothing within the Michigan constitution, case law, or other statutes prescribe that home help caregivers fall within the jurisdiction of the Commission. Notably, such caregivers are unique in that the primary control exerted over them comes from the individual receiving care. The limited title of public employee is only placed upon caregivers to the extent that the state "shall engage in collective bargaining with the exclusive bargaining representative concerning the terms and conditions of employment that are within the state's control." MCL 400.804(3). By contrast, the participants or their

[2] For those who are within the civil service, the MCSC must classify all positions:

> 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. [Const 1963, art 11, § 5. See also *Reed*, 301 Mich at 145–146.]

representatives serve "as the sole employer of individual home help caregivers and retain the rights to select, hire, direct, schedule, supervise, or terminate the services of any individual home help caregiver who provides individual home help services for the participant in accordance with the laws and regulations governing the Home Help Program." MCL 400.804(2). And nothing within the Act alters those rights afforded to participants or the participants' representatives. *Id.*

Here, the Legislature intentionally designated caregivers as being "public employees" "solely for the purposes of collective bargaining." MCL 400.804(1). This intent is made clearer by the amendment to PERA, which specifies that an individual may be designated by the legislature as a public employee, but such designation may be limited to the purposes of collective bargaining. MCL 423.201(1)(e)(ii). And "[t]he designation does not render the individual an employee of this state or political subdivision of this state for any purpose other than the limited purpose authorized by the legislature." *Id.* Indeed, the Legislature expressly excluded such caregivers from the jurisdiction of the MCSC. Thus, MERC properly has jurisdiction over the pending petition.

Courts have further recognized that certain employees—those who maintain only a tangential relationship with the State—do not fall within the jurisdiction of the MCSC. Notably, the Court of Appeals found that mental health workers jointly employed by the Michigan Department of Mental Health and a nonprofit residential healthcare were not part of the state civil service. *Am Fed of State, Co & Muni Employees (AFSCME), AFL-CIO v Civ Serv Comm'n*, unpublished opinion per curiam of the Court of Appeals, issued July 5, 1996 (Docket Nos. 170606, 170893), p

2.[3] There, the Court noted that joint employment does not necessitate civil service classification. *Id.*

Beyond this, in *Civil Service Commission v Department of Labor*, the Michigan Supreme Court considered the constitutionality of legislation that removed "workers' compensation hearing officers from the state civil service by organizing them in a board." 424 Mich 571, 576 (1986). There, the Court found that the constitutional provisions which authorize the MCSC to "classify all positions" and empowers appointing authorities to "create or abolish positions for reasons of administrative efficiency" do not prevent the Legislature from "creating new positions or eliminating old positions and changing the respective duties and responsibilities by law." *Civil Serv Comm*, 424 Mich at 625; Const 1963, art 11, § 5. The Court recognized limits on this power of the Legislature, however, requiring it to "act in good faith, and not merely transfer a civil service position to non-civil service status." *Civil Serv Comm*, 424 Mich at 625. With this in mind, the Court held that the statutory section at issue that abolished the position of hearing referee and a separate statutory section that created a board of magistrates did not violate art 11, § 5 of the Michigan Constitution. *Id.*

What this means, then, is that the constitutional provisions which empower the MCSC are not usurped by legislation that accomplishes similar ends. By virtue of this, it follows that the Legislature is empowered to prescribe that caregivers

[3] While unpublished and therefore not binding, the Court of Appeals' analysis of a joint-employment relationship is helpful because of its similarities to this case.

bear the title of "public employee" for the *sole* purposes of collective bargaining, are not in the state civil service, and thus fall outside the purview of the MCSC.

B. The MCSC's creation was necessitated by concerns regarding a "spoils system," and such concerns are inapplicable in the instant matter.

The civil service system came into being largely as a result of a 1936 Report of the Civil Service Study Commission, following a study of "personnel practices of the state with a view to determining, in as accurate a way as possible, the most important evils from which the state has been suffering." *Council No 11, Am Fed of State, Co & Muni Employees (AFSCME), AFL-CIO v Civ Serv Comm*, 408 Mich 385, 397 (1980) (internal citations omitted). The result of such study was a condemning of the "spoils system" of state personnel practices and the drafting of recommendations for establishment of a state civil service system. *Id*. The 1936 Report's focus was "primarily upon the system of political appointments, promotions, demotions, rewards and punishments which have always been a part of the traditional spoils system." *Id*. at 397–398. In 1940, a constitutional amendment established a constitutional state civil service system, superseding previously enacted legislation. *Id*. at 400–401. This amendment was largely retained in the Michigan Constitution of 1963.

The Acts at issue have no relationship to concerns regarding any "spoils system." Here, the Acts do not enable the State to individually select caregivers and, notably, those individuals who receive care from such caregivers retain the power to select, hire, supervise, and terminate such caregivers. In short, there is no

infringement upon the constitutional language found in Article 11, § 5, and there is no "spoils system" created by the Acts.

II. The Acts comport with the United States Constitution and the First Amendment's protection of freedom of association.

The United States Constitution provides, "Congress shall make no law . . . abridging the freedom of speech . . . ." US Const, Am I. And, "[a]lthough freedom of association is not explicitly enumerated in the First Amendment, the United States Supreme Court has found it to be a right included within the 'penumbra' of the First Amendment." *Pego v Karamo*, __ Mich App __ (2024) (Docket No. 371299), 2024 WL 4875159, *6, citing *McDonald v Grand Traverse Co Election Comm*, 255 Mich App 674, 681 (2003). An employee's freedom to associate naturally includes the corresponding right to refrain from associating with others. *Id*. The freedom of association largely protects the right to join together with other like-minded individuals and exercise ones' free speech. *Id*.

A. The Acts do not deprive caregivers of their right to speak freely, to advocate ideas, to associate with others, and to petition the government for redress of grievances.

Public employees have the right "to speak freely, to advocate ideas, to associate with others, and to petition [their] government for redress of grievances," and these rights are guaranteed by the First Amendment. *Minn State Bd of Comm Colleges v Knight*, 465 US 271, 286 (1984) (internal citations omitted); see also *Bierman v Dayton*, 227 F Supp 3d 1022, 1028 (D Minn, 2017) (the First Amendment protects the right of individuals to associate for expressive purposes, and this includes "a right to associate for purposes of petitioning the government and

influencing public policy"). However, the First Amendment does not impose an "affirmative obligation on the government to listen, to respond or, in this context, to recognize the association and bargain with it." *Minn State Bd of Comm Colleges*, 465 US at 286 (internal citation omitted).

The Acts explicitly states that "[PERA] applies to the governance of the collective bargaining relationship between the department and the bargaining representative of a bargaining unit composed of individual home help caregivers as provided in this section." MCL 400.804(1). And, notably, § 11 of PERA explicitly states that "[r]epresentatives designated or selected for purposes of collective bargaining by the majority of the public employees in a unit . . . shall be the exclusive representatives of *all* the public employees in such unit." MCL 423.211 (emphasis added). Section 11 further provides that such representation does not prohibit any employee from presenting a grievance to their employer and having such grievances adjusted, "without intervention of the bargaining representative," so long as such adjustment aligns with the terms of a collective bargaining agreement which may be in effect and the bargaining representative has an opportunity to be present at any such adjustment. MCL 423.211.

Here, the Acts do not deprive individual caregivers their right "to speak freely, to advocate ideas, to associate with others, and to petition [their] government for redress of grievances." See *Minn State Bd of Comm Colleges*, 465 US at 286. Rather, the State "has simply restricted the class of persons to whom it will listen in its making of policy." *Id*. at 282. The Plaintiffs "have no constitutional right to force the government to listen to their views." *Id*. at 283. "A person's right to speak

is not infringed when government simply ignores that person while listening to others." *Thompson v Marietta Ed Ass'n*, 972 F3d 809, 814 (CA 6, 2020). Simply put, representation by a bargaining representative neither denies nor infringes upon the protections afforded under the First Amendment.

B. The Acts do not compel membership in nor financial contributions to a labor organization.

Plaintiffs rely heavily on the Supreme Court's decisions in *Janus v AFSCME*, 585 US 878 (2018), and *Harris v Quinn*, 573 US 616 (2014), pertaining to mandatory fees and their violation of the First Amendment. Indeed, the Court clearly held that mandatory fees violate the First Amendment's freedom of association. In both cases, however, the Court's ruling was narrowly limited to the issue of mandatory payment of fees to a labor organization as a condition of continued employment. In neither case did the Court hold, or even suggest, that the mere certification of an exclusive bargaining representative infringed on an employee's First Amendment right to freedom of association. In short, Plaintiffs' attempt to expand these decisions should be rejected.

Assuming Plaintiffs point to the *Harris* Court's discussion of partial-public employees and quasi-public employees, 573 US at 646, that does not support finding a constitutional violation. Again, *Harris*'s reach is limited strictly to payment of mandatory dues and how such dues interact with the protections afforded by the First Amendment. Here, *Harris* does not state, or imply, that membership within a labor organization infringes upon the First Amendment's protection of freedom of association. Subsequent decisions by courts of appeals addressed this very issue.

In *D'Agostino v Baker*, the First Circuit considered a freedom of association challenge to a statute similar to the Acts at issue here. 812 F3d 240, 242 (CA 1, 2016). Notably, in *D'Agostino*, the claimants were not challenging mandatory fees, but rather the exclusive bargaining scheme generally. *Id.* at 242. The court noted that the claimants, like those in *Harris*, were "partial" public employees. *Id.* at 243. The court explained, however, that *Harris* did not control because it did not speak to the premise that "exclusive bargaining representation by a democratically selected union does not, without more, violate the right of free association on the part of dissenting non-union members of the bargaining unit." *Id.* at 243. Moreover, the court noted that past precedent supported the constitutionality of such a scheme. *Id.*, citing *Minn State Bd of Comm Colleges*, 465 US at 289.

Similarly, in *Bierman v Dayton*, the US District Court for Minnesota addressed a similar matter. Specifically, the court was confronted with individual home care providers suing state officials and a labor union, claiming a violation of the First Amendment right to freedom of association through the state's certification of a union as exclusive representative. 227 F Supp 3d at 1028. Notably, such home care providers were expressly considered executive branch state employees under Minnesota state law. *Id.* The court noted that in *Harris*, the plaintiffs were not "challeng[ing] the authority of the SEIU–HII to serve as the exclusive representative of all the personal assistants in bargaining with the State. All they s[ought] [was] the right not to be forced to contribute to the union, with which they broadly disagree." *Id.* at 1031, citing *Harris*, 573 US at 649. *Bierman*, like *D'Agostino*, noted the narrow scope of *Harris*'s holding, observing that:

> the Supreme Court solely decided that it was a violation of the First Amendment for a state to require homecare providers to pay fair share or agency fees to a union. The *Harris* Court further made clear that a "union's status as exclusive bargaining agent and the right to collect an agency fee from non-members are not inextricably linked. [*Id.*, quoting *Harris*, 573 US at 649.]

To be sure, the *Bierman* and *D'Agostino* courts properly recognized the limited scope of *Harris*.

The same applies here. Collective bargaining with a union on the terms and conditions of Plaintiffs' employment does not equate to forced association with a union. See *Bierman*, 227 F Supp 3d at 1029. Here, Plaintiffs are not required to become members of a union, but merely reap the benefits of the terms and conditions of their employment negotiated by the union. And the Acts expressly authorize Plaintiffs to raise grievances directly with their employers without the involvement of the exclusive representative. MCL 423.211. Thus, the mere existence of an exclusive bargaining representative is not enough to impair their associational freedoms.

As is plainly evident, the Acts do not violate Plaintiffs' First Amendment rights by providing collective bargaining rights to home help caregivers. Here, caregivers are bestowed with the power to select a bargaining representative, with such representative being selected by the majority of the public employees in the unit. See MCL 423.211; see also Mich Admin Code R 423.149a. And, even if a labor organization was selected, caregivers like Plaintiffs are not required to render any financial support to any union. Nor must they involve the union for grievances with

their employers. The Acts are beyond the scope of *Janus* and *Harris*, and neither support Plaintiffs' claimed First Amendment violations.

III. Plaintiffs have failed to state a claim against Commissioners Pappas, Young, or Chiaravalli, LEO, and Corbin as they cannot be compelled to perform an act outside their statutory authority.

For the reasons above, Defendants contend that Plaintiffs' complaint should be dismissed as the Acts do not violate the US Constitution or the Michigan Constitution. Separately, this Court should dismiss Commissioners Pappas, Young, and Chiaravalli, LEO, and Corbin because none of these defendants individually enforce the Acts. Nor may any of them be compelled to act on the petition as this would exceed their statutory authority. Thus, for this separate reason, Commissioners Pappas, Young, and Chiaravalli, LEO, and Corbin must be dismissed.

As discussed, MERC is a statutory body created by 1939 PA 176 to determine bargaining units, adjudicate unfair labor practices, resolve employment disputes, and to conduct representation elections. See MCL 423.1 *et seq*. Three members are appointed, two commissioners constitute a quorum, and official orders require the concurrence of a majority of the commission. MCL 423.3; MCL 423.4. Relevant here, MERC is responsible for investigating petitions for representation, and MERC is the entity that directs an election to take place. MCL 423.27(b). Plaintiffs acknowledge as much. (See Compl, ¶¶ 1, 50–51, 55, and 63–64; *id.*, p 13.) Also, Plaintiffs have failed to cite authority that grants the individual Commissioners power to independently conduct or certify an election. Again, official orders require a majority, i.e. two, of the commissioners. MCL 423.3; MCL 423.4.

While Plaintiffs point to the fact that MERC was transferred to LEO in 2019, see MCL 125.1998(7)(f), a Type I transfer does not give LEO or Corbin the authority to exercise MERC's functions. MCL 16.103(a) ("Any board, commission or other agency granted a type I transfer shall exercise its prescribed statutory powers, duties and functions of rule-making . . . and adjudication independently of the head of the department.") Thus, neither LEO nor Corbin possess the authority to conduct or certify an election, and neither may this Court compel LEO or Corbin to take such action.

For these reasons, Plaintiffs have failed to state an enforceable claim against Commissioners Pappas, Young, and Chiaravalli, LEO, and Corbin, and they each should be dismissed with prejudice.

CONCLUSION AND RELIEF REQUESTED

There is no genuine issue of material fact in this case, and Defendants are entitled to judgment as a matter of law. The Acts do not infringe upon the US or Michigan Constitutions, and neither *Janus* nor *Harris* touched on the issue of an exclusive representative violating the First Amendment's freedom of association. For these reasons, Defendants respectfully request that this Court enter an order granting Defendants' motion for summary disposition, as well as any other relief this Court deems appropriate.

Respectfully submitted,

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Dated: September 12, 2025

ATTACHMENT

AFSCME, AFL CIO v Civ Serv Comm'n,
unpublished opinion per curiam of the Court of Appeals,
issued July 5, 1996 (Docket Nos. 170606, 170893)

1996 WL 33324117
Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Court of **Appeals** of Michigan.

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES (AFSCME), AFL CIO, Plaintiff/Cross-Defendant Appellee,
v.
CIVIL SERVICE COMMISSION, Defendant,
and
DEPARTMENT OF MENTAL HEALTH. Defendant/Cross-Plaintiff Appellant,
and
OFFICE OF STATE EMPLOYER, Cross/Plaintiff-Appellant.
AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES (AFSCME), Plaintiff/Cross-Defendant Appellee,
v.
MICHIGAN CIVIL SERVICE COMMISSION Defendant-Appellant,
and
DEPARTMENT OF MENTAL HEALTH, Defendant/Cross-Plaintiff,
and
OFFICE OF STATE EMPLOYER, Cross-Plaintiff,

Nos.
170606
, 170893.
|
July 5, **1996**.

Before: BANDSTRA, P.J., and GRIBBS and C.O. GRATHWOHL,* JJ.

Opinion

PER CURIAM.

***1** This is a consolidated matter. In case no. **170606**, defendant/cross-plaintiff Department of Mental Health, and cross-plaintiff, Office of State Employer (collectively referred to as DMH) appeal by right the circuit court order. The order vacated the decision of the Michigan Civil Service Commission (commission), refusing plaintiff/cross-defendant American Federation of State, County and Municipal Employees' (AFSCME) request to classify employees of CK Homes Inc (CK Homes), into the Civil Service Commission(Commission). In case no. 170893, defendant commission appeals the same order. We reverse.

The parties articulate several **issues** in this matter. However, the essential underlying questions are whether DMH and CK Homes are joint employers of the mental health employees at **issue**, and whether a finding of joint employment requires the Civil Service Commission to classify the employees in the state civil service.

In this case, the Commission approved the Employment Relations Board's decision that DMH was a joint employer with CK Homes, but found that such a designation did not necessarily mean that the employees should be classified in the civil service. After a detailed analysis of the appropriate standard, the Commission held that CK Homes employees did not hold positions in the state service, and that classification in the civil service was neither required nor permitted. Both parties appealed to the circuit court and the trial court disagreed with the standard and analysis employed by the Commission. The trial court concluded, in a lengthy opinion that the Commission's refusal to classify the positions was unauthorized by law and unsupported by competent, material and substantial evidence on the whole record.

This Court reviews decisions of the Civil Service Commission to determine whether they are authorized by law, and whether the decision is supported by competent, material and substantial evidence on the whole record. Const 1963, art 6, § 28; *Viculin v. Dep't of Civil Service,* 386 Mich. 375, 392; 192 NW2d 449 (1971). This Court accords due deference to administrative expertise and should not invade the province of exclusive administrative factfinding by displacing the agency's choice between two reasonable different views. *AFSCME v. Louisiana Homes, Inc,* 192 Mich.App 187, 189-190; 480 NW2d 280 (1991), vacated 441 Mich. 883 (1992), reinstated on remand 203 Mich.App 213; 511 NW2d 696 (1993). This Court may not substitute its judgment even if it would have reached a different conclusion

sitting as the agency. *Knowles v. Civil Service Comm,* 126 Mich.App 112, 117-118; 337 NW2d 247 (1983).

In this case, the circuit court rejected the Commission's finding that DMH is a joint employer of the CK Homes employees, and determined that DMH was the sole employer. The **issue** of whether DMH was a joint employer, along with a nonprofit residential home care provider, of direct-care employees has been addressed by this Court in *Louisiana Homes,* supra. *Louisiana Homes* was an appeal from a Michigan Employment Relations Commission finding that DMH was a joint employer and required to collectively bargain with the employees. A panel of this Court concluded that the finding of joint employment in *Louisiana Homes* was authorized and supported by competent, material and substantial evidence on the whole record. In analyzing the question of coemployer status, the Court noted that the "general characteristics of employers are: (1) they select and engage the employee, (2) they pay the wages, (3) they have the power of dismissal, and (4) they have power and control over the employee's conduct." Id at 190. In *Louisiana Homes,* this Court emphasized that DMH mandated the budget guidelines for the residential home, and established guidelines for personnel decisions and requirements, training requirements, minimum staff qualifications, and contract provisions. Id.

***2** In this case, the evidence of control by DMH is similar. Although CK Homes recruits and hires its own employees, DMH established the minimum qualifications and training requirements. Employee compensation is determined by consideration of DMH regulations governing expenditures for overall personnel costs at each residential home. Although CK Homes is able to discipline and dismiss employees, they must do so within the intent of DMH policy. Further, while CK Homes directs and supervises employees on a day-to-day basis, it is always with the intent of implementing DMH's policies and procedures. In light of the similarity between the circumstances in this case and the facts of *Louisiana Homes,* we must conclude that the Commission's finding of joint employment in this case was supported by competent, material and substantial evidence.

However, a finding of joint employment does not necessarily require classification in civil service. There is "no requirement that all who provide service for the state must be in a civil service position. *Michigan State Employees Ass'n v Civil Service Comm,* 141 Mich.App 288, 293; 367 NW2d 846 (1985). The Michigan Constitution does not prohibit the Civil Service Commission from using independent contractors where there will be substantial long-term savings, and where there is no bad faith or attempt to reintroduce the spoils system. Id. Moreover, the approval or disapproval of contractual personal services remains with the Civil Service Commission. *Detroit Automobile Inter-Ins Exchange v Comm'r of Ins,* 125 Mich.App 702, 711-712; 336 NW2d 860 (1983). The cases relied upon in this case by the trial court, which involve the state accident fund, and do not involve a joint employment situation, were inapposite. Further, in *Louisiana Homes,* supra, this Court recently affirmed the Commission's decision that similar group home employees were subject to collective bargaining rather than to classification as civil servants. In light of *Louisiana Homes,* we cannot say that the Commission's decision not to classify the employees of CK Homes was unreasonable. Because the Civil Service Commission has plenary authority over all aspects of civil service employment, and because not everyone who provides service for the state must be classified, the Commission's decision not to classify the CK Homes employees should not be second-guessed by the courts.

Reversed.

All Citations

Not Reported in N.W.2d, 1996 WL 33324117