

MINUTES OF:
MCO Central Committee Meeting
SEIU Local 526M
May 7, 2015

The meeting of the MCO Central Committee was called to order at 10:14 a.m. by President Tom Tylutki at the Crowne Plaza Hotel in Lansing.

Roll call was taken and the following were present: Ed Clements, Steve Waara, Chuck Nagele, Scott Waggoner, Mike Lennox, Kenneth Kisner, Roswell Randolph, Joe Grezlik, Tom Tylutki, Marcus Collins, Rochelle Phipps, Lee Gatson, Ralph Goudy, Eric Jones, Eric Stott, Patrick Leavitt, Scott Kurtz, Christopher Schmidt, Jason Ludwigson, Mark Dunn, Joe Voorheis, Al Augustine, Grant Sage, Paul Jensen, James Barker, Joe Wohlfert, Arthur Alvarado, Scott Bungart, Cary Johnson, Ricky Ries, Brad Gorman, Ernest Redman, Mike Wilds, Lynn Carrick, Frank Nolan, Jonathan Hoath, Scott Welke, Michael Leo, Larry Henley, Mark Rankin, Arland Lavigne, Douglas Roderick, James Wexstaff, Emmanuel Ekeagwu, Leticia Smith, James Crofoot, Ed Snively, Michael Chantelois, Eric Hemmila, Michael Presley, Kevin McDaniel, Ponda Esu, Thomas Bonczar, Darren Ansorge, Jim Hargrave, Angela King, David Pasche, Jeff Ambrustmacher, Robert Lincoln, Andrew Potter, Teresa Nolan, Deb Vansickle, Marcia Berry, Ron Niemi, Gabe Justinak, Paul Jones, Dave Altenberndt, Doug Anderson, Adam Earley, Samantha Chism, William Alford, Monoletoe McDonald, Terry Bridges, Bob Fisher, Ray Sholtz, Lou Duma, Joe Hemenway, James Richardson, Brent Kowitz, Mike Guerin, Paul Ott, John Scheffler, William Henderson, Tim Blain, Jason Cowling, Pat Boggs, Hans Vogt, Cory Reid, Nick Soper, Byron Osborn, David Belanger, Ross Shubert, Jerry Williams, John Hassen, Will King, Rita Wise, Paul Tavana, Gerald Beard, Cindy Kogut, Anita Lloyd, Lori Iding, Stephanie Short, Jeff Foldie, Tangee Laza, Karen Mazzolini, Chereilyn Dunlap, and Jeremy Tripp.

The chair asked for a moment of silence for those injured on the job and those on duty.

Motion by Jim Barker to allow the chair to be flexible with the agenda. Supported by Ron Niemi.
MOTION CARRIED.

President Tom Tylutki discussed Mel Grieshaber's retirement. Grieshaber was given a standing ovation and thanked by the committee. Discussed the hiring of Andy Potter as Chief of Staff.

The minutes of the Oct. 21, 2014 Central Committee meeting were presented for review.
Motion by Paul Jensen to accept as printed. Supported by Jim Barker. MOTION CARRIED.

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The minutes of the Oct. 20, 2014 State Executive Board and Appeals meeting were presented for review. Motion by Larry Henley to accept as printed. Supported by Lee Gatson. MOTION CARRIED.

The minutes of the Nov. 7, 2014 State Executive Board and Appeals meeting were presented for review. Motion by Paul Jensen to accept as printed. Supported by Teresa Nolan. MOTION CARRIED.

The minutes of the Dec. 9 & 10, 2014 State Executive Board and Appeals meeting were presented for review. Motion by Lee Randolph to accept as printed. Supported by Kevin McDaniel. MOTION CARRIED.

The minutes of the Dec. 11, 2014 Executive Council meeting were presented for review. Motion by Larry Henley to accept as printed. Supported by Lee Gatson. MOTION CARRIED.

The minutes of the Jan. 6 & 7, 2015 State Executive Board and Appeals meeting were presented for review. Motion by Larry Henley to accept as printed. Supported by Ron Niemi. MOTION CARRIED.

The minutes of the Feb. 12 & 13, 2015 State Executive Board and Appeals meeting were presented for review. Motion by Ron Niemi to accept as printed. Supported by Larry Henley. MOTION CARRIED.

The minutes of the March 16 & 17, 2015 State Executive Board and Appeals meeting were presented for review. Motion by Joe Grezlik to accept as printed. Supported by Larry Henley. MOTION CARRIED.

Bill Henderson presented the financial report for December 2014 to the committee. Motion by Larry Henley to accept the report as given. Supported by Ron Niemi. MOTION CARRIED.

Andy Potter reported on the following topics:

- Discussed changes for the future for unions (attached).
- Discussed private prison bills in the Michigan House.
- Reported and outlined goals for future success for MCO.
- Discussed with the committee the mandatory overtime process.

Jeremy Tripp presented the legislative report (attached).

Jeff Foldie presented the legal report (attached).

Tom Tylutki reported on the following topics:

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- Discussed the DOC reinstating the state corrections academy.
- Discussed ongoing issues with Aramark.
- Discussed 12-hour shift pilot programs.
- Discussed upcoming bargaining surveys and encouraged members to give MCO input for bargaining.
- Discussed the 2% wage increase in Oct. 2015.
- Reported on the Right to Work and 4 percent lawsuits.
- Reported on the RUO challenge at Civil Service.
- Discussed chapter elections in detail and election notices.
- Referenced seniority based transfers in May.
- Discussed the grievance procedure and reminded the committee that they are accepted by US mail, fax or hand delivery only.

As there was no further business to discuss, a motion was made by Larry Henley to adjourn.
Supported by Ron Niemi. MOTION CARRIED. Meeting adjourned at 2:20 p.m.

Respectfully Submitted,
Brent Kowitz
Recording Secretary

BK:al/opeiu459afl-cio

Building a Better Union: Strategic Goals for Future Success

Andy Potter, MCO VP/Chief of Staff
May 7, 2015 MCO Central Conference
Crowne Plaza Hotel, Lansing, MI



Building a Better Union: Strategic Goals for Future Success
May 7, 2015

Where we're at...

- Power of MCO - MCO has one of if not the highest rate of membership of any union in the Coalition of State Employees. 97% of those in the bargaining unit are dues-paying members. MCO has stood tall when RTW came to our state, when our members have been unfairly attacked; and when politicians and the media have turned on us.
- But success in the past is no guarantee of success in the future. Times are changing (reduced union influence in Michigan/U.S., RTW, legislators focused on budget cuts above all else, etc.), 24 hour news cycle, more money in politics,

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Where we're at...

- The programs I'm going to discuss are proactive steps to ensure MCO thrives for decades because of one simple idea – we put our members first, we put them at the center of what we do, and we meet them where they are.
- We need to listen to our members and take seriously the things that matter most to them.
- Leverage = members and friends

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Where we're at...

- We need to make sure our resources are aligned to prioritize and then deliver on what our members need and want.
- We must be willing to try new things, take risks, and let go of those things that are no longer working for us, no matter how long we have been doing them
- We will leave no stone unturned when it comes to delivering for our members, and we will not be shy in terms of inviting our members to step into leadership, find a place where they can plug in, and play some roll in strengthening and building our union.

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What is happening next...

- The MCO State Executive Board worked with all of MCO Staff to develop a number of strategic initiatives. Two of them I want to highlight today and ask for your full participation:
 - > Member Listening Campaign
 - > Military Members Project
 - > PTSD Research and Formal Position

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No quick fix...

- These initiatives are not Band-Aids and they don't sugar coat what needs to be done.
- They aren't quick fixes
- And while some of us will say these ideas aren't new, we have discussed them for years, what is new is the depth of commitment from leadership, staff and I hope from all of you, to actually get them done.
- They go to the heart of what MCO needs.

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Priority initiative #1 Listening campaign

GOAL: Through small group conversations MCO will complete a high engagement listening campaign that produces meaningful connections with 5% of our membership.

Who: MCO members, Chapter Officials, Board and staff

What: A statewide campaign to talk with, and listen to, 5% of our membership (325 people)

Where: 30+ small group conversations hosted by chapter officials and Executive Board members at each institution.

When: Between May Central Conference and end of summer.

How: Training the Board to lead, staff supporting the Chapter Officials to recruit, 7-10 members attending each listening session

Why: To Identify new leaders, get ideas about their hopes, fears, and interest that could deepen their connection to MCO, and to get a clear sense of the issues members have as we approach

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Priority initiative #2 Military members campaign

GOAL: Help support the needs of our military veteran members and recognize the unique perspectives and talents they bring.

Who: MCO military members including those on active duty, in the reserves, vets who have served and MCO members with families in the military;

What: A gathering of interested military members to help develop a program that could possibly meet some of the needs of these members;

Where: A central statewide location;

When: Gathering in the fall or winter depending on the level of interest shown in the weeks and months to come;

How: Led by Board members Ray and Ed, and supported by chapter officials and staff, we will invite military members to sign up to be part of this effort and then we will invite them to a small conference to design a model program;

Why: To meet our members where they are, to provide something they need, to deepen their engagement, to build New external relationships and to develop a new worker program, one military specific for MCO and MI

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Priority initiative #3 PTSD research/outreach

- Find/study research on PTSD in corrections officers and possibly fund new research.
- Projected start time for this project is after bargaining (late 2015/early 2016).

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Conclusion

- I, Board, Staff and Tom are committed to building the strongest union corrections officers can have.
- We cant do without you and without the members. You are closest to them every day. Help us find the ones with energy to lead, help us know what is on their mind and share the great ideas or pressing needs that come form them.
- Thanks.

MCO CENTRAL CONFERENCE
LEGAL ROUND-UP
MAY 2015

I. Lawsuit & Legal Action

- a. Appeals process is LOOOOOOOOONNNNNNGGGGGG!!!!!!!!!!!!
- b. Right to Work & 4% Appeals
- c. Portal to Portal Case
 - i. Federal Case – See Summary of Law Review
 - ii. Michigan Minimum Wage Act Suit
 - 1. Briefing put on hold pending RTW / 4%
 - a. Hostile Judge – “Issue belongs in bargaining…”
 - 2. Affidavits for suit

II. Arbitration Awards & Settlements

- a. Camera Cases
 - i. Norman Ward & William Dillman – Lost
 - 1.
 - ii. IBC “3” – Settled at Arbitration
 - 1. Chapter Leaders / Arbitration Process
 - a. Arbitrators are not juries – Very Sophisticated!!!
 - b. Do not lose sight of the venue / burden of proof!!!!
- b. Strip Search Arbitration – Lost – (Employer has low threshold to request strip)
 - i. Reasonable Suspicion -- Lower than probable cause standard
- c. Union Representation (Eric Tropp) Arbitration – Settled
 - i. Settlement
 - ii. Important note:
 - 1. ER has obligation to provide union representation
 - a. Specific to MCO contract.

- b. Above and Beyond Weingarten Rule
- d. Sick Leave Rule Change – Lou Duma
- e. Criminal Case – Written Reprimand – Case dismissed
- f. Medical Documentation (Deer Hunting) – Won
- g. Return to work cases:
 - i. Arbitrated and Won – Amber Dotson (very well tried case!!!!)
 - ii. Settlements – half a dozen or so members back to work
- III. MCO et. al. grievances:
 - a. Snow day grievance – DOC & CFP
 - b. S/L Verification -- CFP
- IV. Representation Points
 - a. Investigative questionnaires to Chapter Officials.
 - b. Grievance time limits!!!!
 - c. Garrity Rights

SIXTH CIRCUIT UPDATE

Scott R. Eldridge

Leigh M. Schultz

Misbah M. Shahid

Miller, Canfield, Paddock and Stone, P.L.C.

Sovereign Immunity Bars FLSA Damages Claims Against Michigan Department of Corrections

In *Michigan Corrections Organization v Michigan Department of Corrections*, Docket No. 14-1028 (Dec. 17, 2014), several corrections officers and their union filed a lawsuit against the Michigan Department of Corrections under the Fair Labor Standards Act (FLSA). Specifically, the plaintiffs sought to recover wages and overtime payments for pre-shift and post-shift activities that they argued constituted compensable work time, such as "punching a mechanical time clock," "waiting in line" for security, and "walking to assigned locations."

The United States District Court for the Eastern District of Michigan ruled that the FLSA claim for damages against the state agency was barred by the doctrine of sovereign immunity. Affirming the lower court's ruling, the Sixth Circuit recognized that the FLSA allows a suit to be "maintained against any...public agency," which includes the "government of a State" and "any agency of...a State." However, that does not mean that Congress invoked a permissible source of power to abrogate Michigan's constitutional immunity from suit. Congress may only abrogate the States' sovereign immunity through its enforcement powers under the Fourteenth Amendment.

The corrections officers argued that minimum wage and overtime amount to fundamental rights of national citizenship protected by the Privileges and Immunities Clause of the Fourteenth Amendment. The Sixth Circuit disagreed based on *Alden v Maine*, 527 US 706 (1999) and *National League of Cities v Usery*, 426 US 833 (1976), in which issues were raised that would have been irrelevant had FLSA violations infringed upon Fourteenth Amendment rights. The Court also stated that since the *Slaughter-House Cases*, 83 US (16 Wall.) 36 (1872), the Privileges and Immunities Clause has "remained 'largely dormant' and has been overtaken by substantive due process as a source of new rights." The Clause now protects only "fundamental" rights of national citizenship, which have "at all times been enjoyed by citizens of the several States which compose this Union." Federal wage and hour protections did not become law until 1938. Therefore, they are not "fundamental" under the Constitution and the states' immunity from FLSA suits has not been abrogated.

The corrections officers attempted to get around the sovereign immunity defense by asking the district court to enter a declaratory judgment and an order for injunctive relief against the Director of the Department of Corrections. The district court also denied this request and the Sixth Circuit affirmed. The Court held that the Declaratory Judgment Act did not provide an independent basis for federal subject matter jurisdiction. The Act creates a remedy for a preexisting right enforceable in federal court such that, at the time of the lawsuit, one of the parties must be able to bring a "coercive" action that Congress authorized the federal courts to hear.

In this case, according to the Sixth Circuit, no such right of action existed under the FLSA because a suit against the Director

for money damages is the same as a suit against the State. Moreover, according to the Court, the FLSA does not authorize a private right of action for injunctive relief. Only the Department of Labor may seek injunctions, the Sixth Circuit explained.

~~Casino Did Not Violate the FLSA By Requiring Security Guards to Stay on the Premises During Unpaid Meal Breaks~~

The Plaintiffs in *Ruffin v MotorCity Casino*, Docket No. 14-1444 (Jan. 7, 2015) are security guards for Defendant MotorCity Casino. The security guards receive meal periods but are required to stay on property, monitor radios, and respond to emergencies. The guards alleged that they were owed overtime under the Fair Labor Standards Act ("FLSA") because they were not compensated for their meal periods.

The United States District Court for the Eastern District of Michigan concluded that the meal breaks were not compensable and granted summary judgment in favor of MotorCity Casino because the time spent by the guards during the breaks was not predominately spent for the employer's benefit. Explaining that the determination of whether time is spent predominantly for the employer's or the employee's benefit depends on the "totality of the circumstances," the Sixth Circuit affirmed.

First, in response to the guards' argument that monitoring their radio was substantial duty that was compensable, the Court stated that numerous other courts have held that an employer's requirement for an employee to carry a radio and respond in emergencies does not convert meal time to work time because it is a *de minimis*, insubstantial duty. Second, the Court noted that the guards did not introduce evidence to demonstrate how often their meal periods were actually interrupted by any calls. Third, the Court stated that the guards' inability to leave the Casino's property during meal period does not transfer the time into compensable work because the Department of Labor Regulations "most pertinent of regulations" state that "[i]t is not necessary that an employee be permitted to leave the premises if he is otherwise completely freed from duties during the meal period."

"That is a sensible position," the Court explained, because it is not so much the employee's inability to leave the premises that indicates who predominantly benefits from the meal period, but

WRITER'S BLOCK?

You know you've been feeling a need to write a feature article for *Lawnotes*. But the muse is elusive. And you just can't find the perfect topic. You make the excuse that it's the press of other business but in your heart you know it's just writer's block. We can help. On request, we will help you with ideas for article topics, no strings attached, free consultation. Also, we will give you our expert assessment of your ideas, at no charge. No idea is too ridiculous to get assessed. This is how Larry Flynt got started. You have been unpublished too long. Contact *Lawnotes* editor Stuart M. Israel at Legghio & Israel, P.C., 306 South Washington, Suite 600, Royal Oak, Michigan 48067 or (248) 398-5900 or israel@legghioisrael.com.



attach

May 2015 Central Conference
Michigan Corrections Organization
Legislative Report – Jeremy Tripp

➤ **November Elections**

- Recap of State and Federal Races

➤ **Ballot Proposal**

- Proposal 1, failed by the largest percentage margin ever (20 to 80 percent)

➤ **Budget process**

- House and Senate are again taking an omnibus approach to the budget process

Corrections Budget House Version

- House Corrections Budget HB4096 is \$1.96 billion which is \$10 mil less than the governor's recommendation and roughly \$56 million less than current year budget.
- Savings are made primarily through cutting of programs deemed outside the scope of MDOC primary mission along with facility efficiencies. In the House budget, most of its \$10 million in savings comes from a series of reductions:

Senate Version

- SB 119 totals around \$1.96 billion and is \$14,500,000 Gross and \$14,500,000 GF/GP under the Governor recommendation.
- Differences will go to Conference Committee made up of House and Senate members.

➤ **Legislative**

- **HB 4467** – would allow prisoners of any security level to be housed at the former Michigan Youth Correctional Facility, a privately-owned prison, in Baldwin.

Current law prohibits an inmate or detainee from being housed at the facility unless the inmate's or detainee's security classification (as it would be determined by MDOC standards) is Level IV or below, and has never previously been above Level IV.

House Bill 4159 would amend the Handgun License Act to specifically authorize an active or retired corrections officer or absconder recovery unit member of the Department of Corrections (DOC) who held a concealed pistol license (CPL) to carry a pistol in a no-carry zone. Passed House 89-21, referred to Senate Judiciary Committee

- **Senate Bill 280** would prohibit public employer contracts that pay union officials for time conducting union business.

Aramark Research Project

- MCO working with the University of Michigan Institute for Research on Labor, Employment and the Economy to examine Aramark contract and its effect on safety and security within Michigan prisons.
- 4 focus groups have been arranged in Ann Arbor, Lansing, Muskegon and Alger.

Correctional Officer Training Academy

- Hybrid System
- High level of union membership amongst new recruits, still need outreach to folks who did not sign up at academy.
- Non-Member Lists in Delegate packet