

STATE OF MICHIGAN
COURT OF APPEALS

UNITED AUTO WORKERS LOCAL 6000,
PAUL POLICICCHIO, SUSAN CAREY,
KATHLEEN DANIELS, INTERNATIONAL
UNION, UNITED AUTOMOBILE, AEROSPACE
& AGRICULTURAL IMPLEMENT WORKERS
OF AMERICA UAW, and LYNDA LEWIS, a/k/a
LYNDA TAYLOR,

UNPUBLISHED
May 1, 2001

Petitioners-Appellants,

v

DEPARTMENT OF LABOR, and CIVIL
SERVICE COMMISSION,

No. 222109
Ingham Circuit Court
LC No. 97-087535-AA

Respondents-Appellees.

And

INTEGRATED SYSTEMS SOLUTIONS
CORPORATION,

Intervening Respondent.

Before: Holbrook, Jr., P.J., and McDonald and Saad, JJ.

PER CURIAM.

Petitioners appeal the circuit court's opinion and order affirming the final decision of the Civil Service Commission (the Commission) in which the Commission refused to assert jurisdiction over a \$68 million contract between the Department of Consumer and Industry Services, formerly known as the Department of Labor (the Department) and Integrated Systems Solutions Corporation (ISSC). In its administrative proceeding, the Commission determined that its own rules gave it no authority or jurisdiction to require the Department to submit, for review and approval, the computer services contract between the Department and ISSC because the contract was not predominantly for personal services. Petitioners appealed to the circuit court, which determined that the Commission lacked constitutional authority to assert jurisdiction over

the contract, effectively affirming the Commission's decision. The circuit court denied petitioners' subsequent motion for a rehearing. We affirm.

When reviewing a circuit court's decision regarding an agency action, this Court must determine whether the circuit court applied correct legal principles and whether it misapprehended or grossly misapplied the substantial evidence test to the agency's factual findings. *Boyd v Civil Service Comm*, 220 Mich App 226, 233; 559 NW2d 342 (1996); *MEAPAC v Secretary of State*, 241 Mich App 432, 444; 616 NW2d 234 (2000). This review is essentially indistinguishable from the "clearly erroneous" standard of review. *York v Wayne Co Sheriff (On Remand)*, 227 Mich App 514, 517; 576 NW2d 436 (1998); *MEAPAC, supra*. The circuit court reviews an administrative agency's decision to determine whether the decision was authorized by law and supported by competent, material, and substantial evidence on the whole record. Const 1963, art 6, § 28; *MEAPAC, supra* at 443-444; *Ansell v Dep't of Commerce (On Remand)*, 222 Mich App 347, 354; 564 NW2d 519 (1997).

The circuit court incorrectly concluded that the Civil Service Commission did not have constitutional authority to consider its jurisdiction over the contract between the Department and ISSC. The authority of the Commission to approve contracts with outside parties finds its genesis in the state Constitution. Const 1963, art 11, § 5 provides:

The [Civil Service] commission shall 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. [Emphasis added.]

The rules of the Commission describe and implement the duties arising under this section of the Constitution. Therefore, the Commission possesses plenary power to make rules and regulations addressing all personnel transactions and regulating all conditions of employment. Const 1963, art 11, § 5, ¶ 4; *Viculin v Dep't of Civil Service*, 386 Mich 375, 398; 192 NW2d 449 (1971).

This Court has expressly held that allowing the Commission to utilize independent contractors does not violate the Michigan Constitution, and the Commission has jurisdiction over contracts for personal services performed by persons outside the classified service. *Michigan State Employees Ass'n v Civil Service Comm*, 141 Mich App 288, 293; 367 NW2d 850 (1985); *International Union, United Automobile, Aerospace & Agricultural Implement Workers of America v Civil Service Comm*, 223 Mich App 403, 406; 566 NW2d 57 (1997); *Michigan Coalition of State Employees Unions v Civil Service Comm*, 236 Mich App 96; 600 NW2d 362 (1999). The Commission's final decision that it did not have to exercise approval or jurisdiction over the instant contract was an exercise of the Commission's constitutional mandate. Thus we find the circuit court erred in reaching the legal conclusion that the Commission's own rule precluding jurisdiction over the contract was unconstitutional.

We turn next to the merits of the case. Because the circuit court found the entire rule unconstitutional and the Commission's final decision unauthorized by law, it did not consider whether competent, material, and substantial evidence supported the Commission's interpretation of its subrule, CSR 4-6.1(a), and the definition of "contract for personal services" given by that subrule. Although in general we remand unresolved issues to the circuit court, an exception may be made where the record is well enough developed for this Court to reach a conclusion on the unresolved question. This is appropriate where the unresolved issue is purely one of law or where the administrative tribunal has sufficiently fulfilled its factfinding function to permit the court of review to reach a determination on the unresolved issue. *Griffin v Civil Service Comm*, 134 Mich App 413, 421 n 2; 351 NW2d 310 (1984). The interpretation of the Commission's rule is a question of law; furthermore, the parties have expressly presented this issue and argued it before this Court.

The rule at issue is CSR 4-6.1(a). That provision reads:

Contract for personal services means a contract between (1) an individual or organization and (2) a state agency, pursuant to which the state agency is obligated to make disbursements for appropriated funds for personal services rendered to, or for the direct benefit of, the state, by persons who are not classified employees of the state. A contract for personal services does not include a contract for the sale of both goods and services if the contract is one predominantly for the sale of goods under article 2 of the uniform commercial code, MCL § 440.2101, *et seq*.

The Commission interpreted this rule to exclude from its jurisdiction contracts predominantly for anything other than personal services. Petitioners argue that CSR 4-6.1(a) should be interpreted literally, and that only contracts where *goods* (as defined by the statute) predominate should be excluded. We disagree.

An agency's interpretation of its own rules and regulations is entitled to considerable deference. *Thomas Twp v John Sexton Corp of Michigan*, 173 Mich App 507, 514; 434 NW2d 644 (1988); *Gravelly v Pfizer, Inc*, 170 Mich App 262, 267; 427 NW2d 613 (1988). Thus, the Commission's interpretation of its rules and regulations, including CSR 4-6, must be upheld unless the evidence firmly establishes that the agency has abused its discretion by arbitrary action or was not authorized by law, and a court of this state cannot substitute its judgment for that of an administrative board or commission acting within its duly granted jurisdiction. *Iams v Civil Service Comm*, 142 Mich App 682, 692-693; 369 NW2d 883 (1985).

The Commission determined that CSR 4-6.1(a) was ambiguous and thus subject to interpretation because a literal interpretation would give the Commission jurisdiction over things that were neither personal services nor goods (such as real estate and electricity), violating its constitutional limits. The Commission interpreted CSR 4-6.1(a) to exclude contracts that were "predominantly for things other than personal services," and for such contracts, the state agency could make disbursements "for the included ancillary personal services without filing a request for approval under the four standards in CSR 4-6.3." In so doing, the Commission rejected the recommendation of its Employment Relations Board (ERB) that the rule be interpreted literally and restrictively.

The Commission noted that the ERB's recommendation was based on a prior decision regarding the same issue which was subsequently vacated by the Commission. The Commission therefore considered the issue de novo and concluded the hearing officer and state personnel director were correct in their determination that a literal interpretation of CSR 4-6.1(a) contradicted the jurisdictional limits imposed by the constitution. It found petitioners' interpretation incorrect because it resulted in unreasonable distinctions, such as between goods purchased and goods leased, or between a sale of "goods" and a sale of "fixtures." These distinctions are not supported by the language of the constitution and "simply make[] no difference in our efforts to protect the merit system."

We find that the Commission's interpretation of its own rules was reasonable, and that the Commission did not abuse its discretion or act arbitrarily in reaching this conclusion. In fact, this decision was consistent with its rejection of the ERB's recommendation in the prior, similar case, and with its subsequent repeal of the "sale of goods" language in the rule.

Finally, we examine the factual question regarding whether the contract was predominantly for personal services. Factual determinations made by the Civil Service Commission must be supported by competent, material, and substantial evidence on the whole record. Const 1963, art 6, § 28; *MEAPAC*, *supra* at 443-444; *Ansell v Dep't of Commerce (On Remand)*, 222 Mich App 347, 354; 564 NW2d 519 (1997). Respondents correctly point out that the "preponderance of the evidence" standard of review imposed by the circuit court does not apply to decisions of the Commission. *Parnis v Civil Service Comm*, 79 Mich App 625, 628-630; 262 NW2d 883 (1977); *O'Neill v Civil Service Comm*, 121 Mich App 256, 260-261; 328 NW2d 547 (1982). Likewise, the Administrative Procedures Act does not apply to the Commission because it is not an "agency" under the Act. MCL 24.203(2); MSA 3.560(103)(2); *Parnis*, *supra* at 629-630; *Viculin*, *supra* at 393-394.

The Commission reviewed the findings of the special hearing officer and the eleven days of hearing transcript and found that the contract was predominantly for the lease of computer time and did not significantly implicate state disbursements for "personal services" as contemplated in Const 1963, art 11, § 5 and CSR 4-6. This affirmed the recommendation of the special hearing officer and the decision of the state personnel director. The Commission had ample evidence on the record to conclude that it did not have to exercise preapproval jurisdiction over the instant contract. It clearly and precisely articulated its findings and the reasons for its decision. *Viculin*, *supra* at 405-406. We conclude, therefore, that the Commission's decision was supported by competent, material and substantial evidence on the record. The circuit court was correct in concluding that the Commission did not have jurisdiction over the contract, albeit for the wrong reason. We therefore do not need to reverse. *DeHart v Joe Lunghamer Chevrolet, Inc*, 239 Mich App 181, 183; 607 NW2d 417 (1999).

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Gary R. McDonald
/s/ Henry William Saad