STATE OF MICHIGAN

COURT OF APPEALS

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA and UAW LOCAL 6888, Plaintiffs-Appellants,	FOR PUBLICATION February 28, 2012 9:00 a.m.
v	No. 299785 Isabella Circuit Court
CENTRAL MICHIGAN UNIVERSITY TRUSTEES and CENTRAL MICHIGAN UNIVERSITY PRESIDENT, Defendants-Appellees.	LC No. 2009-007991-CZ

Before: WHITBECK, P.J., and MURRAY and DONOFRIO, JJ.

PER CURIAM.

Plaintiffs, International Union, United Automobile, Aerospace & Agricultural Implement Workers of America and UAW Local 6888 (collectively, the Union), appeal the circuit court order granting summary disposition in favor of defendants, Central Michigan University Trustees and Central Michigan University President (collectively, the CMU officials), under MCR 2.116(C)(10) and MCR 2.116(C)(5).[1] The Union is the collective bargaining representative for office professional employees of Central Michigan University (the University), and it filed a complaint on behalf of its members that the University employs. The trial court found that the CMU officials' policy and procedures regarding university employees' candidacy for public office did not violate the Political Activities by Public Employees Act (the Act)[2] and that the Unions' members suffered no particularized injury as a result of the policy and procedures. We reverse in part and affirm in part.

[1] The CMU officials also filed a cross-appeal. However, the parties agreed to dismiss those claims after oral argument.

[2] MCL 15.401 through MCL 15.407.

I. FACTS

On December 4, 2008, the CMU Board of Trustees adopted the Political Candidacy of Employees policy (candidacy policy). The policy provided, in part:

> Employees who seek public office of any kind must do so on their own time. They must be clear in their statements of candidacy that they are not speaking on behalf of Central Michigan University, and they must do everything reasonably within their control to assure that there is no public misrepresentation on this point. They may not use any university resources of whatever kind in furtherance of campaign activity; nor may the university or its employees use any university resources to assist, oppose or influence their campaign.
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> Any employee of the university who becomes a candidate for nomination and/or election to any federal, state, county, or local office, whether it be part-time or full-time, paid or unpaid, is required, upon filing for candidacy, to present to the applicable personnel office (either Human Resources or Faculty Personnel Services) a statement from his/her supervisor and the applicable vice president or the provost (or president with respect to members of the president's division) of CMU attesting that appropriate arrangements have been made to ensure that their candidacy in no way will interfere with the full performance of their university work and their candidacy will pose no conflict with professional standards or ethics.
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> Further, any employee of the university, who is elected or appointed to any public office, shall present to the appropriate CMU personnel office, within twenty (20) work days after having been elected or appointed, a statement from her/his supervisor and the applicable vice president or the provost (or president with respect to members of the president's division) of CMU attesting that appropriate arrangements have been made to ensure that the duties associated with the public office in no way will interfere with the full performance of their university work and that those duties pose no conflict of interest with respect to CMU employment. If the duties associated with the public office will interfere with the full performance of the employee's university work, or do pose a conflict of interest, then an alternate relationship with the university must be arranged, which may include a change from full-time university status to that of part-time, an unpaid leave of absence, or termination of employment. Reasonable alternatives short of termination must be explored. Leaves of absence for long periods of time, or requests for subsequent or sequential leaves, will be considered and approved upon presentation of a compelling advantage to the university.

The candidacy policy also included an introductory paragraph encouraging employees' public service and emphasizing the importance of distinguishing public service from university work.

On March 15, 2009, the President of CMU issued a draft of procedures and guidelines (draft procedures) pertaining to the candidacy policy. The draft procedures required employees to discuss their desire to be a candidate for office with their supervisor and applicable vice

president at least 60 days before filing for candidacy. The draft procedures further provided that the vice president or provost must be convinced that no substantial conflict of interest or conflict of commitment would be involved in the candidacy. The vice president or provost also had to gain the president's support before issuing a statement to the relevant personnel office. Similarly, the draft procedures required an elected or appointed employee to discuss with their supervisor and applicable vice president or provost, within 20 days of election or appointment, how the employee's election or appointment would not interfere with normal work responsibilities. The vice president or provost had to be convinced that there was no substantial conflict of commitment or conflict of interest and also gain the president's support before issuing a statement to the relevant personnel office. The draft procedures further provided that, where the vice president or provost was not convinced there was no conflict of interest or conflict of commitment, the employee could suggest an alternative or reduced work assignment, or take an unpaid leave of absence to eliminate any conflict. The draft procedures stated that any employee that did not follow the procedures were subject to discipline, including discharge.

The Union filed suit, seeking declaratory and injunctive relief preventing the CMU officials from applying the candidacy policy and the draft procedures. The Union alleged that the candidacy policy and draft procedures placed requirements and conditions on employees that violated their rights to run for office under the Act. Both parties moved for summary disposition.

The Union argued that the Act barred the CMU officials from interfering with university employees' off-duty political conduct and that the candidacy policy placed conditions on employees' ability to run for office where there was no conflict with work. The CMU officials responded that the candidacy policy properly regulated employees' work conduct and was consistent with the Act.

The CMU officials argued that there was no case for the trial court to decide because the University had not applied the candidacy policy to any employees. The Union responded that they did not lack standing because there was an actual controversy where the candidacy policy threatened to harm employees represented by the Union.

The trial court granted the CMU officials' motion for summary disposition according to MCR 2.116(C)(10), no genuine issue of material fact, and MCR 2.116(C)(5), lack of standing to sue. With respect to MCR 2.116(C)(10), the trial court concluded that the CMU officials' candidacy policy and draft procedures did not violate the Act because they were a permissible mechanism to ensure that university employees adhered to the Act by regulating only political activities that interfered with work. The trial court also found that the CMU officials did not regulate political content, activity, or views of employees, and provided discipline only for violating the candidacy policy and procedures. With respect to MCR 2.116(C)(5), the trial court concluded that the Union's members had suffered no particular injury because the candidacy policy adhered to the Act and because no one had attempted to become a candidate since the University implemented the candidacy policy. The trial court also denied the Union's motion for summary disposition and denied declaratory and injunctive relief.

The Union now appeals.

II. MCR 2.116(C)(5)

A. STANDARD OF REVIEW

The Union argues that the trial court erred in granting summary disposition in favor of the CMU officials under MCR 2.116(C)(5) on the basis of lack of standing to sue. "In reviewing a motion for summary disposition pursuant to MCR 2.116(C)(5), this Court must consider the pleadings, depositions, admissions, affidavits, and other documentary evidence submitted by the parties."[3] This Court reviews de novo a trial court's determination on a motion for summary disposition[4] as well as the legal question of whether a party has standing to sue.[5]

B. LEGAL STANDARDS

The trial court found that the Union's members suffered no injury because none of the Union's members had attempted to become a candidate for public office since the University implemented the candidacy policy and because the University had not implemented the draft procedures. The trial court concluded that it was unlikely to redress any speculative injury because it found that the policy was legal. In so holding, the trial court relied on the principles set forth in *Nat'l Wildlife Federation v Cleveland Cliffs Iron Co*[6] and *Michigan Citizens for Water Conservation v Nestle Waters North America Inc*.[7] However, two days before the trial court's opinion, the Michigan Supreme Court held in *Lansing Schools Ed Ass'n v Lansing Bd of Ed*[8] that the doctrine relied on in those cases "lacks a basis in the Michigan Constitution and is inconsistent with Michigan's historical approach to standing."

The Supreme Court held:

> Michigan standing jurisprudence should be restored to a limited, prudential doctrine that is consistent with Michigan's long-standing historical approach to standing. Under this approach, a litigant has standing whenever there is a legal cause of action. Further, whenever a litigant meets the requirements of MCR 2.605, it is sufficient to establish standing to seek a declaratory judgment. Where a cause of action is not provided at law, then a court should, in its discretion, determine whether a litigant has standing. A litigant may have standing in this context if the litigant has a special injury or right, or substantial

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[3] *Aichele v Hodge*, 259 Mich App 146, 152; 673 NW2d 452 (2003).

[4] *Ormsby v Capital Welding, Inc*, 471 Mich 45, 52; 684 NW2d 320 (2004).

[5] *Manuel v Gill*, 481 Mich 637; 753 NW2d 48 (2008).

[6] *Nat'l Wildlife Federation v Cleveland Cliffs Iron Co*, 471 Mich 608, 628-629; 684 NW2d 800 (2004).

[7] *Michigan Citizens for Water Conservation v Nestle Waters North America Inc*, 479 Mich 280, 294-295; 737 NW2d 447 (2007).

[8] *Lansing Schools Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349, 352-353; 792 NW2d 686 (2010).

> interest, that will be detrimentally affected in a manner different from the citizenry at large or if the statutory scheme implies that the Legislature intended to confer standing on the litigant.[9]

In so stating, the Supreme Court overruled *Nat'l Wildlife Federation* and its progeny. Therefore, under the current approach, it is sufficient to establish standing to seek a declaratory judgment when a litigant meets the requirements of MCR 2.605.[10]

MCR 2.605(A)(1) provides:

> In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted.

MCR 2.605 does not limit or expand the subject-matter jurisdiction of the courts, but instead incorporates the doctrines of standing and ripeness.[11] An "actual controversy" under MCR 2.605(A)(1) exists where a declaratory judgment is necessary to guide a plaintiff's future conduct in order to preserve legal rights. The requirement prevents a court from deciding hypothetical issues.[12] However, by granting declaratory relief in order to guide or direct future conduct, courts are not precluded from reaching issues before actual injuries or losses have occurred.[13] The essential requirement of an "actual controversy" under the rule is that the plaintiff pleads and proves facts that demonstrate an adverse interest "necessitating the sharpening of the issues raised."[14]

C. APPLYING THE LEGAL STANDARDS

At the outset, we conclude that the trial court was correct in determining that the Union did not have standing to the extent that it challenged the *draft procedures*. Guidance on the future implications of the draft procedures would be speculative and hypothetical because those procedures were still in draft form and the University had not yet implemented them.

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[9] *Id.*

[10] *Id.*

[11] *MOSES, Inc v SEMCOG*, 270 Mich App 401, 416; 716 NW2d 278 (2006).

[12] *Associated Builders and Contractors v Director of Consumer & Industry Servs*, 472 Mich 117, 126; 693 NW2d 374 (2005), overruled on other grounds in *Lansing Schools Ed Ass'n*, 487 Mich 349.

[13] *City of Huntington Woods v City of Detroit*, 279 Mich App 603, 616; 761 NW2d 127 (2008); *City of Lake Angelus v Mich Aeronautics Comm*, 260 Mich App 371, 376-377; 676 NW2d 642 (2004).

[14] *Associated Builders and Contractors*, 472 Mich at 126.

Turning to the candidacy policy, it is true that the Union had not suffered injury, given that no university employee had ever even attempted to become a candidate since the University implemented the policy in December 2008.[15] However, applying MCR 2.605, we conclude that the Union has standing to pursue its claims for declaratory and injunctive relief because it presented an actual controversy regarding the scope of the university employees' rights under the Act and the legitimacy of the candidacy policy. To hold otherwise would be inconsistent with the purpose of a declaratory judgment, which is:

> to enable the parties to obtain adjudication of rights *before an actual injury occurs*, to settle a matter *before it ripens into a violation of the law* or a breach of contract, or to avoid multiplicity of actions by *affording a remedy for declaring in expedient action the rights and obligations of all litigants*.[16]

Here, there is an actual controversy between the parties because the CMU officials promulgated a policy that, allegedly, is at odds with a state statute. And although no university employee has yet sought to run for office, it is appropriate for the Union to seek an adjudication of its members' rights and responsibilities before the candidacy policy causes actual injury or ripens into a violation of the law by interfering with the employees' ability to engage in off-duty political activity.

Moreover, applying the principles announced in *Lansing Schools Ed Ass'n*, the Union has standing because the university employees have a special and substantial interest in ensuring that the CMU officials' policies do not violate their statutory rights under the Act, and that interest is different from any rights or interests of the public at large.[17]

Thus, we conclude that the trial court erred in finding that the Union had not presented an actual controversy and in determining that the Union did not have standing to seek declaratory and injunctive relief regarding the university employees' rights under the candidacy policy.

III. MCR 2.116(C)(10)

A. STANDARD OF REVIEW

The Union argues that the trial court erred in granting the CMU officials' motion for summary disposition pursuant to MCR 2.116(C)(10). When reviewing a motion brought under MCR 2.116(C)(10), the court considers the affidavits, depositions, pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the non-moving party.[18]

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[15] *MOSES*, 270 Mich App at 414 (providing that organizations have standing to bring suit in the interest of their members where such members would have standing as individual plaintiffs).

[16] *Rose v State Farm Mut Auto Ins Co*, 274 Mich App 291, 294; 732 NW2d 160 (2006) (emphasis added).

[17] *Lansing Schools Ed Ass'n v Lansing Bd of Ed*, 487 Mich at 372.

[18] *Rose v Nat'l Auction Group, Inc*, 466 Mich 453, 461; 646 NW2d 455 (2002).

Summary disposition is appropriate if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law.[19] This Court reviews de novo a trial court's determination on a motion for summary disposition.[20]

B. LEGAL STANDARDS

MCL 15.403 of the Act provides, in relevant part:

> (1) An employee of a political subdivision of the state may:
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> * * *
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> (c) Become a candidate for nomination and election to any state elective office, or any district, county, city, village, township, school district, or other local elective office without first obtaining a leave of absence from his employment. If the person becomes a candidate for elective office within the unit of government or school district in which he is employed, unless contrary to a collective bargaining agreement the employer may require the person to request and take a leave of absence without pay when he complies with the candidacy filing requirements, or 60 days before any election relating to that position, whichever date is closer to the election.
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> (d) Engage in other political activities on behalf of a candidate or issue in connection with partisan or nonpartisan elections.

The activities permitted in MCL 15.403 "shall not be actively engaged in by a public employee during those hours when that person is being compensated for the performance of that person's duties as a public employee."[21]

The language of the Act is unambiguous.[22] A state employee may engage in partisan political activity except "during those hours when that person is being compensated for the performance of that person's duties as a public employee."[23]

C. APPLYING THE LEGAL STANDARDS

Given our conclusion that the Union did not have standing to challenge the draft procedures, we need not address the Union's claims regarding the implications of those procedures. Thus, we focus our analysis here on the legitimacy of the candidacy policy.

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[19] *Id.*

[20] *Ormsby*, 471 Mich at 52.

[21] MCL 15.404.

[22] *Mich State AFL-CIO v Mich Civil Serv Comm*, 455 Mich 720, 734; 566 NW2d 258 (1997).

[23] MCL 15.404; *Mich State AFL-CIO*, 455 Mich at 734.

The Union argues that the candidacy policy violated the Act because it interfered with its members' ability to engage in political activities during non-work hours. More specifically, the Union asserts that the candidacy policy violates the Act because it requires an employee to provide advance notice and engage in advance discussion with two levels of superiors when seeking to participate in political office. Those superiors must then attest that the political activity will not present a conflict of interest or interfere with employment. The candidacy policy further provides that failure to demonstrate that political candidacy activities will not interfere with university activities could affect the employee's job status.

The Michigan Supreme Court has recognized a public employer's "power to regulate and even prohibit off-duty activity which is found to interfere with job performance."[24] "That power does not extend, however, to the blanket prohibition of off-duty activities, political or otherwise, as a matter of policy simply because such activities may conceivably interfere with satisfactory job performance."[25] "What an employee does during his off-duty hours is not of proper concern to the [public employer] unless and until it is shown to adversely affect job performance."[26] Even then the public employer's authority is "not to curtail the off-hours activity, it is to deal with the adequacy of job performance."[27] "Certainly, it is within contemplation that off-duty political involvement may adversely affect a [public] employee's performance at work. If and when it does, the [public employer] is empowered to deal with such circumstances on a case-by-case basis."[28] But public employers may not regulate the off-duty political activity of their employees in any way that preemptively conflicts with the Act.[29]

The trial court found that the candidacy policy did not violate the Act because it does "not restrict an employee's rights to engage in political activity and do[es] not hinge in any way on the political content or position an employee purports, nor do[es] [it] provide a blanket ban on an employee's off-duty political activity." We agree. The candidacy policy only regulates an employee's work and not an employee's activities outside of work. The candidacy policy does require consultation with the CMU officials regarding an employee's political candidacy, but this is to ensure that an employee's work responsibilities are not affected. The CMU officials are empowered to deal with circumstances where off-work political involvement may adversely affect an employee's performance at work.[30] The CMU officials have the authority to regulate on-duty political activity or deal with unsatisfactory job performance attributable to off-duty

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[24] *Council No 11, Am Federation of State, County and Municipal Emp (AFSCME), AFL-CIO v Mich Civil Serv Comm*, 408 Mich 385, 407; 292 NW2d 442 (1980).

[25] *Id.*

[26] *Id.*

[27] *Id.*

[28] *Id.*

[29] *Id.* at 408.

[30] *Id.* at 407.

political activity or to any other cause on a case-by-case basis.[31] The state may regulate the off-duty political activities of public employees where those activities interfere with job performance.[32]

The candidacy policy specifically requires that "appropriate arrangements have been made to ensure that their candidacy in no way will interfere with the full performance of their university work and their candidacy will pose no conflict with professional standards or ethics." The candidacy policy does not curtail outside-of-work activities and does not potentially curtail any work responsibility that was affected by outside-of-work activity. The assurances that the policy requires are not whether or how an employee will seek political office. Rather, the assurances are that this activity will not interfere with work. Additionally, any discipline or leave of absence that a candidate/employee could be assessed would be in response to political activities at work, rather than off-duty political pursuits. The employer may prohibit political activity during work hours when the employer compensates the employee, and such compensation is for the performance of the employee's duties as a public employee.[33] It was therefore permissible for the CMU officials to regulate the Union members' work environment, and the trial court did not err in its findings.

Because the trial court's finding that the CMU officials' candidacy policy did not violate the Act was not in error, it correctly denied declaratory and injunctive relief.

We reverse in part and affirm in part. We do not retain jurisdiction.

/s/ William C. Whitbeck
/s/ Christopher M. Murray
/s/ Pat M. Donofrio

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[31] *Id.* at 409.

[32] *Mich State AFL-CIO*, 455 Mich at 733.

[33] *Id.* at 734.