

STATE OF MICHIGAN
COURT OF APPEALS

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

UNPUBLISHED
July 5, 1996

No. 170606
LC Nos. 90-66841-AA,
90-66864-AA

No. 170893

MICHIGAN CIVIL SERVICE COMMISSION

Defendant-Appellant,

and

DEPARTMENT OF MENTAL HEALTH,

Defendant/Cross-Plaintiff,

and

OFFICE OF STATE EMPLOYER,

Cross-Plaintiff,

Before: Bandstra, P.J., and Gribbs and C. O. Grathwohl,* JJ.

PER CURIAM.

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*.

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.

/s/ Richard A. Bandstra

/s/ Roman S. Gribbs

/s/ Casper O. Grathwohl