

Senate Subcommittee – 5/4/10 – Ruthanne Okun

Sen. Bill Hardiman: Ms. Okun, I understand you're the person who has the knowledge about some of these issues. Could you please let the members – just provide us with a brief overview of the process of forming a union in general and then we'll talk a little bit more specifically about your involvement and what you go through. If you could provide us with that I'd appreciate it.

Okun: Generally what happens is employees will sign cards, indicating that they wish that a particular labor organization is to represent them for purposes of collective bargaining. And when they have 30 percent of the cards, they present a petition to us. It's called a representation – petition for representation proceedings, and as a result of the petition for representation proceedings we'll check cards. We will ask the employer to provide a list of names and addresses of employees who are in that bargaining unit – in the proposed bargaining unit – and we check those names against the cards. And if they're in fact the 30 percent showing of interest then we will proceed to hold an election. The employees – the union may also go to the employer and seek voluntary recognition, but if the employer refuses voluntary recognition, or if they feel that it's more appropriate to have a private election, then we will in fact hold an election to determine whether the employees in the bargaining unit wish the employees – the union to represent them. There may be also questions with regard to the people who are in or out of the unit, whether they are – the unit is appropriate, other issues with regard to the time and date of election. In such case, the – they will proceed to a hearing before an administrative law judge of the state office of hearings and administrative rules. And, if not, the parties can enter into a consent election agreement, and they will proceed to hold a private election.

Sen. Hardiman: So, your role is to receive the cards from the employees and verify that they are indeed employees and that there are indeed 30 percent of the –

Okun: Our role is simply to conduct the election. We – again, we don't receive the cards directly from the employees. We receive the cards from the petitioner, and then we will check the cards in accordance with the list of names and addresses that is provided by the employer.

Sen. Hardiman: Ok. In the case of the MHBCCC [the dummy employer in the day care unionization] were they determined to be the employer in this case?

Okun: In this particular case, the documents that were submitted to us indicated that they in fact were the employer, and neither side challenged that – nor did any person in the bargaining unit challenge the employment relationship.

Sen. Hardiman: So you received documents from the council, the MHBCCC, that they were indeed the employer of the childcare workers for whom you received petitions for. Is that correct?

Okun: I was not privy to – I was not – the election officer would have received the documents. I don't recall if they were from the employer or from the union, or from both. But, there was no question in this case presented to us as to who in fact was the employer.

Sen. Hardiman: When you say there was no question, meaning, as far as – would you say – DLEG or MERC was concerned, the council was the employer?

Okun: No one challenged the employment relationship – the employer-employee relationship. Nor did any person in the bargaining unit challenge the employment relationship. So, it was not something that we needed to look into.

Sen. Hardiman: So, someone in your office – the election officer is it? – received some documentation from the council stating that they were the employer of the 40,000 or so daycare workers? Is that –

Okun: That is correct. The parties, together, had presented information to us that there was an employment relationship.

Sen. Hardiman: When I spoke with the chairman of the council, and the director last week – if I recollect properly – they said that they received authorization, I think it was from MERC (Michigan Employment Relations Commission), saying that they could act – I can't remember the exact term – but I think it was as the employer in an employment relationship, they thought they received – if I'm incorrect, and the director can correct me if I am – they received authorization from MERC saying that they could act in an employer relationship. But you're saying you received documentation that they were indeed the employer for these daycare workers that were subsequently unionized?

Okun: I'd have to see what document they were referring to, indicating that they were employer, but it would not be something that we would generally do. Parties present to us information with regard to the employment relationship.

Sen. Hardiman: I'm a bit perplexed as to how these daycare providers were deemed employees, and I guess I still am. It sounds like you're saying you received documentation that they were the employer, and they're saying they received authorization from MERC, saying that they were authorized to act as the employer, I believe. So, that still seems to be a mystery. Who would know precisely? Who would have that information?

Okun: We would if – again, it would be the information that they had presented to us with regard to employer-employment relationship. There probably was information, and again neither party objected to the fact that – there was nothing, no independent determination made by MERC. It never went to MERC. If there would be a question as to whether there was an employment relationship, it would need to be determined by the Michigan Employment Relations Commission. And there again, it was a consent election where the parties agreed as to who the employer and the employees were, who was in the bargaining unit, who wasn't in the bargaining unit, and then, therefore, they proceeded to an election.

Sen. Hardiman: So there was a consent from the council that these employees – say that again. The council consented to...

Okun: There was a consent election agreed to. In other words, indicating the employment relationship and that – who was in the bargaining unit and who would be eligible to vote. And it was that consent election. When that happens – when there's a consent election there never is an independent determination to – by the Michigan Employment Relations Commission. They're the only body that would have the authority to make that determination, and there were no hearings in this case. Had in fact someone wished to

challenge the employment relationship, they would be welcome to do that, and then they would seek a hearing with the Michigan Employment Relations Commission.

Sen. Hardiman: And do you have – can you provide to this committee the documentation that stated initially that these daycare workers were indeed employees of the council?

Okun: I can. I'm not certain if in this case there was a – an interlocal agreement in regards to that, or there was something presented with regard to the nature of the employment relationship. But, again, either party always has the opportunity to challenge the nature of the employment relationship, and if they do that they can seek a hearing with the Michigan Employment Relations Commission. And no one did seek a hearing in this case, and therefore the parties entered into a consent election agreement, which allowed the election to move forward.

Sen. Hardiman: Well, there are two things here. One, we're talking about from 40 and I've heard up as high as 70,000 daycare workers, and some of them didn't know they were being unionized until they received notification that they were in the union. So, I don't think they would seek any relief from that because they didn't know it. So, there must've been some documentation, from what you're telling me, that says that they were indeed employers – or that the daycare workers were indeed employees of the council. So, if you could provide us with that documentation that would be helpful. I think the second thing is, are they public employees? Are these daycare workers public employees of the council? You know, I guess that's at issue as well.

Okun: Again, no one challenged the nature of the employment relationship. It wouldn't be our position. When parties consent to an election, it would not generally be something that we would do to look into it unless one of the – again, someone in the bargaining unit, or someone brought it to our attention that there in fact was not an employment relationship.

Sen. Hardiman: Well, under that scenario, someone who is doing some work and receiving some state funds, someone could come in and say that all of these people are employees of an entity, and if that's not challenged they could be seen as employees as well. And I guess I'm just – I'm thinking about the thousands of people who didn't even know that this process was going on. So, you consider them to be – are they public employees for the purpose of the candidacy of the election? Are they public employees or just employees?

Okun: I – we would consider them public employees.

Sen. Hardiman: You would consider them public employees?

Okun: Yes, and I also have to differ with the fact that there were a number of employees who didn't know that the election was going on. We sent out – and I don't recall if this one was 30,000, but there were two elections – large elections that we've held. Probably the largest in our history. And we sent out 30,000, or 30,000 ballots in one case – 29,000 ballots in one case and 30,000 in another case. And, they again were to every individual that was on the list that was provided to us by the employer.

Sen. Hardiman: These ballots that you send out: Is this certified mail or how do you send these ballots out?

Okun: I think they were sent out by the State of Michigan mailroom. There was nothing that we did independently with regard to that, but they were actually sent out by the State of Michigan mailroom. And we received some ballots back, but not a significant number enough to have an effect on the results of the election.

Sen. Hardiman: Let me ask another question about that. So, you sent out these ballots to these people who were designated as employees, and you received what percentage back?

Okun: Let's see. With regard to the –

Sen. Hardiman: Or the number.

Okun: – ballots themselves, we received about 6,700 – 6,600 ballots back. And, 234 of them were spoiled. But, we, again Senator, we have no control with regard to how many ballots we receive back. The ballots went out, they went out again by the State of Michigan mailroom. There was nothing unusual with regard to this election except the fact that it was a large number. But, it was fairly routine with regard to a mail-ballot election that was held within our agency.

Sen. Hardiman: So there are 30,000 ballots sent out, you received 6,700 back, so there are 23,000 that did not send a ballot back. We don't know if they opened the mail, got the mail, we just don't know, but these folks are now deemed to be in this union.

Okun: You know Senator, I used to represent employers, and we – one of the things we always told people when there were union elections was the fact that the mail – the union will be selected by a majority of the people who vote in the election – not with regard to the majority of people in the bargaining unit. That's why you try to encourage everyone to vote in the election, and we simply receive the ballots back and however many we receive back, the majority of those that we receive back, that's who determines whether there is or is not a union.

Sen. Hardiman: I was working at GM many, many, many years ago, and if I was working at a company and there was an election, I'd know that. If I was an independent – or considered myself an independent contractor – I wouldn't expect to be confronted with a ballot election. I just wouldn't, because I'd have no reason to. Ok, I think I understand what you did, and you're going to give us some documentation that shows – what showed your organization that these people were in the union. So, in your mind, in MERC's mind, these 30,000, 40,000 employees are public employers – public employees of the council – now as recognized by MERC. Are they governed by the Public Employment Relations Act?

Okun: They are.

Sen. Hardiman: They are. Are there other benefits provided to them? Is that part of that or is this – as far as I know, they're deemed to be in this union and they're paying union dues – do they – is someone negotiating for their benefits, their health care, their retirement, anything like that? Or is that not your –

Okun: That's not with our – within our purview.

Sen. Hardiman: That's not your area to think about.

Okun: We – the only way we would become involved if they asked our assistance with regard to mediation.

Sen. Hardiman: Ok, so, according to you they are public employees. Alright, are there other questions? Senator Jansen.

Sen. Jansen: Thank you, Mr. Chair. A couple quick questions. Have you overseen an organizing process like this before? And for me, the question is begging: There's a funding source to the employee that seems different than most where they're being paid by, I'll say, the state – which is somewhat of a third party in some cases and the union is then taking money from that third party before they actually get the money delivered to them for the service. Is that – seems –

Okun: All of our public employees receive money – receive their salaries from the state.

Sen. Jansen: You're – yeah, and you're making the assumption that they are a public employee, because that's what's happened. But it seems to me that before this all happened they were not public employees; they were third party, or they were private independent contractors, or whatever you want to call them. So, I mean, you're maybe looking at it today, but it seems to me as I go back and look at this, they were independent contractors and somebody was paying them and this union process was – it just seems very odd to me. Have you ever overseen a unionization process like this before in your role?

Okun: I was familiar with the unionization process, which was taking place similarly with my colleagues throughout the country. Similarly, I think a similar process took place in Washington and Illinois and Iowa, so it wasn't anything unusual. Again, the situation that occurred in our agency – we're a very, very respectful agency. I mean we do everything above board and we try not to violate any laws if we can certainly do that. And the only thing that was unusual in this particular case again was the number of ballots – and we certainly could have sent out the – that large number on our own, but we thought it would be more appropriate to have it done in a more professional manner via the state mailroom. So, it wasn't – there wasn't anything really unusual.

Sen. Jansen: But you had never run an election, or you had never been overseeing a process like this before? This seems different than any other that I've seen.

Okun: We run elections every day, and probably because of the number of employees because of the cost impact of travel and so on, the majority of them are mail ballot elections.

Sen. Jansen: But I'm kind of coming back yet to the – this is an independent contractor in my mind when we're looking at this at the beginning. They're being paid by somebody that is an outside source, because they're working with the family and the person that has the child – that's who they're providing the service to. It just seems to me that – and we all know in a normal process it's employee A works for the company, and that's where the

negotiation happens, that's where the unionization happens. This is a triangle. And I – it seems to me that that is not a normal unionizing process. You see what I am saying?

Okun: The bargaining relationship was always between a – is with a third party. There's – our law says that we don't consider where the funding comes from in determining the nature of the employment relationship. And I'm sorry if I'm not answering your question, but it's difficult for me to –

Sen. Jansen: I'm not trying to put you in a bad position. It just seems to me that maybe it's not even a triangle; it's actually a square, because you've got – you actually have four entities. You've got the actually – the union itself involved in this process, so it seems to me that there's now even one more party involved. But it sounds like you – whatever, you've not been in this. I've got a couple other questions. On is, if 30,000 ballots, 29,000 ballots, 30,000 ballots were all mailed out three separate times, who paid for those?

Okun: I'm sorry; three separate times you said?

Sen. Jansen: You said 30,000 ballots were sent –

Okun: Oh no, there were two elections – there was two large elections, very large elections that we were handled – and one of them was 29,000 and one of them was 40,000.

Sen. Jansen: 40,000?

Okun: Correct.

Sen. Jansen: Okay, because I heard you say 30, 29 and 30.

Okun: Oh, I'm sorry. If I did, I misspoke.

Sen. Jansen: Ok so it's 40 and 29.

Okun: Right, there were two separate large ones.

Sen. Jansen: Alright, and so in those elections who paid for those mailings and all the materials and the processing – how does that work?

Okun: Normally the state pays for that – we pay for that.

Sen. Jansen: Ok, so they're unionizing and we're paying the bill on that.

Okun: We always pay with regard to mail ballots. They – with regard to mail ballot elections, whatever costs that's – the – as a public agency – that all of the costs with regard to associated with the election would be [sic].

Sen. Jansen: Ok, so, in your budget, I'm going to guess, easily, that was \$69,000 to mail those two batches out. Ok, maybe you got a cut rate – and – but there's still printing, there's still processing – just let me use the number. Ok, \$69,000 – how did you, I mean, where in your budget did you find whatever amount of money to pay for this?

Okun: The same way we would find to pay for any election that comes up. And I don't think it was anywhere near the \$69,000. In fact, we – when we talked about the concern that we had with the large election, we thought about perhaps contracting it out to someone like the American Arbitration Association, and we found that via the state mailroom we could do it significantly cheaper.

Sen. Jansen: Ok, well then maybe I can run my next election through that same office. That'd be great.

Okun: We'd be happy to have you.

Sen. Jansen: Yeah, ok, so, the budgeting process then for that you really can't budget that. That's something that you don't really know how many elections you're going to have and all that process, so.

Okun: That is correct. Our budget is very, very fluid. It's very challenging to try to and budget for situations – especially like, in a situation right now, we might receive a huge number of fact findings where we pay the entire amount. So, we don't have any control over that.

Sen. Jansen: And then there's obviously a mailing of 40,000 and 29,000, the names and address and all that. That also came from state then? It had to.

Okun: The names and addresses came from the employer.

Sen. Jansen: Ok, so –

Okun: They're required to provide us with a list of names and addresses.

Sen. Jansen: Ok, these would be the same names and addresses where automatic subsidy checks are going to, right?

Okun: I'm sorry; I don't know where they came from. We just request that the employer provide us with names and addresses.

Sen. Jansen: Ok, alright. Thanks.

Sen. Hardiman: Thank you Sen. Jansen. Sen. Scott.

Sen. Scott: Thank you Mr. Chairman. Are there other states that this kind of election is held for childcare workers?

Okun: There was an election, again, in Washington. I believe there was an election – now I should also mention that there was a question as to whether the – their employer would voluntarily recognize the employees, and I think in this particular case the parties together believed that with the large number of employees they should proceed with an election. And there was in Washington state, I believe – I don't know if was an election or a voluntary recognition – but they are recognized. There was also in Illinois and in Iowa from what I understand.

Sen. Scott: And when was this election held? When...(not understandable)

Okun: This was held in 2006.

Sen. Scott: 2006.

Okun: Correct.

Sen. Scott: So if it was held in 2006, Mr. Chair, why are we having this problem now? I guess I don't understand what's really going on, and I'm trying to.

Sen. Hardiman: Senator, let me see if I can state it very succinctly. From my standpoint, there are 40,000, and maybe up to 70,000 at times, daycare workers in this state who are deemed to be in a union. This is not a statement against unions, but if you look at the process in which these people were quote unquote unionized, many believe that they're independent contractors – perhaps even private business people. They have a small business; they're not making a lot of money; they're independent. And for some of them – and I've seen letters – some of them have said, hey, all of the sudden I have a notice that I'm in a union, and that I'm not an employee of the state. How can I be in a union? And it's wrong. And, from this chairman's standpoint, in the appropriations subcommittee, I've asked the question: Where's the value? What is the benefit? And people have talked about collaboration and communication and all of that – that's good. But the real benefit is a provision of training services and other services that the department is providing – not the council, and not the union. And so, I think it's in 2008 there's been some estimate there's been as high as \$3.7 million in union dues paid. But the lynchpin is the council, and so that's the issue. Now, in 2006 this didn't happen, but in 2008, 2009, it did, and so that's why I'm focused on this issue.

Sen. Scott: Okay are you saying that the majority of the people do not wish to be in this union and they're forced into it? Is that what you're saying?

Sen. Hardiman: I'm saying that some are, and I think forced unionization is absolutely wrong. And I'm saying that this process – it's wrong. And, so, I have a few more questions, but that's my point. Do you have more questions?

Sen. Scott: Ok, I guess what – I've been in unions for many years but if you didn't wish to be in the union, you didn't – weren't forced in the union.

Sen. Hardiman: I don't want to debate this right here with you, but the point is –

Sen. Scott: I'm not debating; I'm just trying to find out what's going on Mr. Chair –

Sen. Hardiman: The point is that it was a process that was taken – that was certainly unusual, to say the least, that brought many people into the union – some who had no knowledge that they were going to be put in the union. And I'm saying it's absolutely wrong, and I'm not going to sit idly by and allow it to happen, and there are a few other points too which I will state later, but that's my thought.

Sen. Scott: Ok, well I'm just trying to find out more about it since I am on this committee, Mr. Chair. Thank you.

Sen. Hardiman: And senator, you can ask any questions of – you would like of the witness. I have another question. You're saying that you received a document – you're not sure what document it was – that stated that these people were public employees of the council. And that's why you proceeded with this to oversee this process – this election process. Is that correct?

Okun: That is correct.

Sen. Hardiman: Ok. What documents do you typically receive that would tell you that? Because it seems like someone could bring you a document and say that well this person is getting state dollars over here through some type of contractual process, and they're in the union – or they're public employees when they're independent contractors. And

you're saying you don't check that at all? You just proceed with the election? Am I correct?

Okun: We would receive the petition, and the petition would name the employer and it would also name the union. And if there's no question about it – or any premonition that we had that there – that this was not a public employment relationship – then we would proceed with the election. Again, generally the elections that we handle are with ABC school district, or a ABC road commission, and so that would not be something that we would normally question.

Sen. Hardiman: So you didn't think that these were independent contractors? Or that thought never crossed your mind? Or I mean, I'm trying to figure out what happens.

Okun: You know, again, with our elections, that would be something that would be perhaps something that our elections officer might have discussed with the individual parties, but because no one brought it up – and because the parties consented to the election as presented to us – that we would proceed to hold the election. And presented information to us that there was in fact the employment relationship [sic]. You know I should follow up on something that Sen. Scott had said with regard to people being required to being members of the union: The Supreme Court has specifically said that people cannot be required to join a union. They can be required to pay the dues for the purposes of collective bargaining, and that's something that's specifically in the Supreme Court. The union is required to provide to employees an indication as to what the costs of representation are – and it is that cost that they can assess rightly on all members of the bargaining unit, because they are all again supposed to receive benefits of union organization.

Sen. Hardiman: If they're members of a bargaining union – if they work for a company, an entity – I can understand that. These are independent contractors, and you were given a petition and some documentation which we will see shortly because you'll give it to us. And so under the Public Employee Relations Act, they have to be public employees, therefore, before you can grant them collective bargaining rights. Is that correct?

Okun: Again, we would've assumed from the documents that we received that there was an employment relationship.

Sen. Hardiman: You assumed from the documents you received – ok, we will take a look at those documents. Senator Scott.

Sen. Scott: Thank you, Mr. Chair. Are providers forced to be in the union?

Okun: No. No one can be forced to be in the union.

Sen. Scott: Was the election proper and legal?

Okun: Everything that we do is above board. The election was no different than any other election that we would've held, according to our procedures.

Sen. Scott: So can they opt out?

Okun: Employees have the right – no employee can be forced to join a union. They only can be forced – or required – to pay their dues for the purposes of collective bargaining. A

union has the obligation to represent all – in all peo – persons in the bargaining unit, whether they are members or not.

Sen. Scott: I'm sorry, would you repeat that?

Okun: A union has the obligation to represent all persons in the bargaining unit, whether they are members or not. Whether they are members of the union or not. But no one can be forced to join the union.

Sen. Scott: So if these members feel that they are forced to they can opt out of this?

Okun: There is a specific provision in the Public Employment Relations Act, which provides that employees – no employee can be forced to join a union.

Sen. Scott: Thank you.

Sen. Hardiman: You know, that's an interesting discussion here, because the fact is that they would still have their union dues, or an equivalent amount, skimmed off – I would say skimmed off the top – of their payments, whether they were in or not. And if they are independent contractors and their issue is are they public employees or are they independent contractors. Now you said you held two elections. One of 29,000 and one of 40,000. When were these election held? And the petition came from – you had a petition from a union, correct? Is that who provides the petition?

Okun: There are two separate elections that were held.

Sen. Hardiman: Can you explain the first one, first.

Okun: I believe the first one was with regard to the home help workers. That was in 2005, and they were represented by the Service Employees International Union.

Sen. Hardiman: And how many – was that the 29,000 or the 40,000?

Okun: I think that was the 40,000 if I recall. Are you waiting for me to respond?

Sen. Hardiman: I thought you were looking, but –

Okun: With regard to the second, and the second one is –

Sen. Hardiman: No, I'm sorry. The first one was you said was – you said the petition was from the Service Employees –

Okun: International Union.

Sen. Hardiman: International Union.

Okun: Correct.

Sen. Hardiman: And who was the employer in that case?

Okun: The employer in that case was Michigan Quality Community Care Council.

Sen. Hardiman: Ok. And so you held the election. Did you hold the election?

Okun: We did.

Sen. Hardiman: And so the 29,000 daycare workers became entered into the union in that case; is that correct?

Okun: That was the second election, senator, sir. The second election involved the daycare workers and childcare providers together, and Michigan Home Based Child Care Council.

Sen. Hardiman: The – I'm sorry. We were talking about the first election first, right? That was – the first election was in 2005 and that was with the SEIU –

Okun: The Service Employees International Union, SEIU, and the Michigan Quality Community Care Council. And that was in 2005.

Sen. Hardiman: And the second election was – who was the union, who was the employer? Michigan –

Okun: That was the election the Michigan Home Based Child Care Council and childcare providers together. Michigan with AFSCME and UAW consortium.

Sen. Hardiman: Ok, and that was held when?

Okun: 2006.

Sen. Hardiman: Ok. Ok. Thank you, that's all the questions we have now. We look forward to the documentation that you received that designated these daycare workers as public employees. Thank you very much.

Okun: Thank you for the opportunity to present.

Sen. Hardiman: Thank you.