

**STATE OF MICHIGAN  
IN THE 30TH CIRCUIT COURT  
INGHAM COUNTY**

**REGENTS OF THE UNIVERSITY OF MICHIGAN**

Appellee,  
and

Case No.: 12-135 AA

**GRADUATE EMPLOYEES ORGANIZATION, AFT MI, AFT, AFL-CIO**

Appellee,  
and

**ATTORNEY GENERAL OF THE STATE OF MICHIGAN, PROPOSED  
INTERVENOR,**

Appellant.

---

Christine Gerdes (P67649)  
Associate General Counsel  
University of Michigan  
503 Thompson St # 5010  
Fleming Admin Bldg  
Ann Arbor, Michigan 48109  
T: (734) 764-0304  
F: (734) 763-5648

David Fink (P28235)  
David Fink & Associates  
Attorney for University of Michigan  
100 West Long Lake Road  
Suite 111  
Bloomfield Hills, Michigan 48304  
T: (248) 971-2500  
F: (248) 971-2600

Mark H. Cousens (P12273)  
Attorney for Graduate Employees Organization,  
AFT, AFL-CIO  
26261 Evergreen Road, Suite 110  
Southfield, Michigan 48076  
T: (248) 355-2150  
F: (248) 355-2170

Bill Schuette  
Attorney General

John J. Bursch (P57679)  
Solicitor General  
Counsel of Record

Richard A. Bandstra (P31928)  
Chief Legal Counsel

Kevin J. Cox (P36925)  
Dan V. Artaev (P74495)  
Assistant Attorneys General  
Michigan Dept. of Attorney General  
3090 W. Grand Boulevard  
Detroit, Michigan 48202  
T: (313) 456-0080  
F: (313) 456-2201

MARK H. COUSENS  
ATTORNEY

---

26261 EVERGREEN ROAD  
SUITE 110  
SOUTHFIELD, MICHIGAN 48076  
PHONE (248) 355-2150  
FAX (248) 355-2170



---

**BRIEF OPPOSING APPLICATION FOR LEAVE TO APPEAL**

## **Introduction**

The Court should deny the application for leave to appeal and dismiss as moot the motion for stay. The officious application by the Attorney General is outside the jurisdiction of this Court, is not supported by law and invades the Constitutional autonomy of the Regents of the University of Michigan.

This is the third attempt by the Attorney General to appeal a decision of the Michigan Employment Relations Commission refusing him authority to interfere with the Commission's role in conducting elections among public employees. The Attorney General has no standing and his demand to intervene was rightly rejected by the Michigan Employment Relations Commission ("MERC"). Appeals from that decision have been rejected by the Court of Appeals and the Supreme Court. This Court should find that the Attorney General is bound by those decisions; that the Court lacks jurisdiction to consider yet another appeal.

## **The Facts**

### A. The Proceedings at MERC

1.

The Graduate Employees Organization, AFT Michigan, AFT, AFL-CIO, ("GEO") is a labor organization representing some 1700 Graduate Student Instructors working for the University of Michigan. In the Spring of 2011, GEO filed a petition with the Michigan Employment Relations Commission requesting that the Commission conduct an election among a unit of some 2000 Research Assistants also employed by the University. As required by R423.145 the petition was supported by the requisite "showing of interest." After extensive

MARK H. COUSENS  
ATTORNEY

26261 EVERGREEN ROAD  
SUITE 110  
SOUTHFIELD, MICHIGAN 48076  
PHONE (248) 355-2150  
FAX (248) 355-2170



discussions, GEO and the University reached an agreement for a consent election. The agreement was presented to the Michigan Employment Relations Commission in September, 2011.

Consent election agreements are not just common; they are the norm. Most elections conducted by the Michigan Employment Relations Commission are the result of an agreement between the petitioning union and the respondent employer. The agreement relates to the mechanics of the election (i.e. date, time and place) and who is eligible to vote. The consent agreement here was not substantially different.

2.

(a) In 1981 the Commission issued a decision involving these parties. 1981 MERC Lab Op 777. In that ruling, MERC found that Graduate Student Instructors (then titled "Teaching Assistants") and Graduate Student Staff Assistants were public employees for the purposes of PERA but that Graduate Student Research Assistants ("RA") were not. That decision was not appealed and remained extant. GEO and the University have engaged in collective bargaining now for three decades for a unit which includes Graduate Student Instructors and Graduate Student Staff Assistants.

(b) A lot has changed in the 30 years that has elapsed between the 1981 ruling and the filing of this petition. The role of research at the University of Michigan has shifted; it is now the central focus of the University with more than a billion dollars expended annually. The number of Research Assistants has increased exponentially; there were some 340 in 1981; there are more than 2,000 now.

The University has also changed its relationship with Research Assistants; it now considers them employees and relates to them as employees. Research Assistants are required

MARK H. COUSENS  
ATTORNEY

26261 EVERGREEN ROAD  
SUITE 110  
SOUTHFIELD, MICHIGAN 48076  
PHONE (248) 355-2150  
FAX (248) 355-2170



to comply with statutes applicable only to employees. For example, Research Assistants are required to execute the statutory oath required of all public employees to support the Constitution of the United States. Graduate Student Research Assistants are provided rights under statutes available only to employees; GSRAs are eligible for leave under the Family Medical Leave Act if they meet the hours and other conditions of the statute.

Based upon these facts, GEO and the University prepared and submitted to MERC a consent election agreement and anticipated that the Commission would approve it.

3.

On September 12, 2011, MERC refused to order an election based on the parties' consent. It did not make any findings of fact. Rather, it stated that it did not have a sufficient factual basis to determine that the Commission should disregard its 1981 decision. Further, the Commission noted that the parties could not vest the Commission with jurisdiction by agreement.

On October 3, 2011, GEO submitted a request for reconsideration of the Commission's order. In that motion, GEO provided the Commission with an extensive affidavit which provided facts showing that Research Assistants were, indeed, employees. On December 16, 2011, MERC granted the Union's motion. It found that the Union had provided an adequate basis on which to conduct a further inquiry into the employment status of Research Assistants. It ordered a hearing on the merits. The hearing has been conducted although additional evidence may be received.

B. The Attorney General's Effort to Intervene

On November 30, 2011, the Attorney General sought to intervene in the proceedings pending before the Commission. As the Commission noted, "...(T)he Attorney General is not

MARK H. COUSENS  
ATTORNEY

26261 EVERGREEN ROAD  
SUITE 110  
SOUTHFIELD, MICHIGAN 48076  
PHONE (248) 355-2150  
FAX (248) 355-2170



seeking to intervene in order to advocate for the interest of a State agency. Rather, the Attorney General seeks intervention for the purpose of opposing a policy decision made by the Board of Regents of the University of Michigan, an autonomous State institution.”

The Attorney General’s motion made the same arguments submitted here: that the Attorney General is entitled to participate; that the Attorney General is authorized to determine what is best for the University of Michigan; that MERC has no authority to refuse the request to intervene. MERC rejected these assertions. It found that the Attorney General did not have an right to participate in a representation case; that intervention would not serve a legitimate purpose under the Public Employment Relations Act, MCL 423.201 et seq.. The opinions of persons other than the actual parties to the proposed election were not helpful in determining what rights were available under the statute.

C. The Attorney General Appeals

1.

On January 6, 2012, the Attorney General submitted an application for leave to appeal to the Court of Appeals. On January 25, 2012, the application was dismissed by a unanimous decision of the panel finding lack of jurisdiction:

The Court orders that the motion for immediate consideration, the motion to stay proceedings and the application for leave to appeal are DISMISSED for lack of jurisdiction. This Court lacks jurisdiction to entertain an appeal from an interlocutory order of the MERC. MCR 7.203(B)(3); MCL 423.216(e); *Harper Hosp Employees' Union Local No. 1 v Harper Hosp*, 25 Mich App 662; 181NW2d 566 (1970). MCL 24.301 does not confer jurisdiction on this Court because the current proceeding before the MERC is not a contested case. MCL 24.203(3); *McBride v Pontiac School Dist*(On Remand), 218 Mich App 105, 122; 553 NW2d 646 (1996); *Michigan Ass 'n of Public Employees v Michigan Employment Relations Comm'n*, 153 Mich App 536, 549; 396 NW2d 473 (1986).

Emphasis added.

MARK H. COUSENS  
ATTORNEY

26261 EVERGREEN ROAD  
SUITE 110  
SOUTHFIELD, MICHIGAN 48076  
PHONE (248) 355-2150  
FAX (248) 355-2170



The order expressly rejected the contention that the MERC proceeding was a contested case.

2.

On January 31, 2012 the Attorney General submitted an application for leave to appeal to the Supreme Court. On February 3, 2012 the Supreme Court denied the application. The order stated:

On order of the Court, the motion for immediate consideration is GRANTED. The application for leave to appeal the January 25, 2012 order of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court. The motion for stay is DENIED.

The Attorney General quotes comments from the concurring statements of Justice Young and Justice Markman. However, their concurrences do not bind this Court. The commentary is not even dicta; it is their observations. With respect, the comments relate to matters which were not fully briefed or argued and reflect views which are not shared by the other members of the Court.

MARK H. COUSENS  
ATTORNEY

26261 EVERGREEN ROAD  
SUITE 110  
SOUTHFIELD, MICHIGAN 48076  
PHONE (248) 355-2150  
FAX (248) 355-2170



## Argument

### I. The Court Lacks Jurisdiction

#### A. MCL 24.301 Does Not Apply

1.

The Court does not have jurisdiction to consider this appeal. The reason is that the proceeding before MERC is not a “contested case” and MCL 24.301 does not apply.

The Attorney General relies on section 101 of the Administrative Procedures Act, MCL 24.301. That provision does not apply here. The statute states:

“When a person has exhausted all administrative remedies available within an agency, and is aggrieved by a final decision or order *in a contested case*, whether such decision or order is affirmative or negative in form, the decision or order is subject to direct review by the courts as provided by law. Exhaustion of administrative remedies does not require the filing of a motion or application for rehearing or reconsideration unless the agency rules require the filing before judicial review is sought. A preliminary, procedural or intermediate agency action or ruling is not immediately reviewable, except that the court may grant leave for review of such action if review of the agency’s final decision or order would not provide an adequate remedy.”

By its terms, this section applies only to appeals from matters that fit the definition of a “contested case.” A contested case is:

“(3) “Contested case” means a proceeding, including rate-making, price-fixing, and licensing, in which a *determination of the legal rights, duties, or privileges of a named party is required by law* to be made by an agency after an opportunity for an evidentiary hearing. When a hearing is held before an agency and an appeal from its decision is taken to another agency, the hearing and the appeal are considered a continuous proceeding as though before a single agency.”

2.

*The proceeding before the MERC ALJ is not a contested case.* It does not determine the legal rights of a party nor is it required by law. The matter is a representation case, not a unfair

MARK H. COUSENS  
ATTORNEY

26261 EVERGREEN ROAD  
SUITE 110  
SOUTHFIELD, MICHIGAN 48076  
PHONE (248) 355-2150  
FAX (248) 355-2170



labor practice charge. A representation proceeding is purely investigative and not adversarial. The primary purpose of a representation case is to determine the make up of a proposed bargaining unit. In most election proceedings, no hearing is conducted; the parties agree on the bargaining unit.

A representation matter is an investigation. Parties are not considered adversaries. Rather, the hearing is a factfinding process. As a result, a hearing is not always required in representation proceedings. *A H S Community Services, Inc and Michigan Department of Mental Health*, 7 MPER ¶ 25121 (1994) (Indeed, this case sought to proceed without a hearing and the parties each suggest that a hearing is not required.). See also *University of Michigan*, 1970 MERC Lab Op 754:

“As a first step in clarifying and applying these concepts we begin with the premise, fundamental to proceedings under both PERA and. the Labor Mediation Act, *that representation proceedings are investigatory and not contested or adversary proceedings.*”

Emphasis added.

The proceeding before MERC is not designed to be adversarial. It is an exercise in the Agency’s fact finding powers.

B. The Court of Appeals Decision Binds the Attorney General

The Court of Appeals held that the MERC proceeding was not a contested case. The Attorney General is bound by this decision; this is the law of the case. “The law of the case doctrine holds that a ruling by an appellate court on a particular issue binds the appellate court and all lower tribunals with respect to that issue.” *Garratt v Twp of Oakland*, 2012 Mich App LEXIS 185 (2012) citing *Ashker ex rel Estate of Ashker v Ford Motor Co*, 245 Mich App 9, (2001).

MARK H. COUSENS  
ATTORNEY

26261 EVERGREEN ROAD  
SUITE 110  
SOUTHFIELD, MICHIGAN 48076  
PHONE (248) 355-2150  
FAX (248) 355-2170



The Court of Appeals order includes a clear and unequivocal statement that the MERC proceeding is not, indeed, a contested case. The Attorney General was unable to persuade the Supreme Court to reverse that determination. Therefore, that binds the Attorney General in this proceeding. The Attorney General is precluded from asserting that the proceeding before MERC is “a contested case.”

C. MCL 24.301 Does Not Apply

1.

MCL 24.301 does not apply here. The Court of Appeals said so. The nature of the MERC proceeding confirms the validity of that decision. This Court should conclude it is bound by the decision of the Court of Appeals and that this Court lacks jurisdiction to consider yet another appeal.

2.

MCL 24.301 does not apply because the Public Employment Relations Act, MCL 423.201 et seq. prescribes the process for an appeal from MERC. MCL 423.216(e) states:

“Any party aggrieved by a final order of the commission granting or denying in whole or in part the relief sought may within 20 days of such order as a matter of right obtain a review of the order in the court of appeals by filing in the court a petition praying that the order of the commission be modified or set aside, with copy of the petition filed on the commission, and thereupon the aggrieved party shall file in the court the record in the proceeding, certified by the commission.”

The Circuit Courts do not have jurisdiction to consider appeals from the Michigan Employment Relations Commission. Appeals go to the Court of Appeals and then only appeals from final orders.

MARK H. COUSENS  
ATTORNEY

26261 EVERGREEN ROAD  
SUITE 110  
SOUTHFIELD, MICHIGAN 48076  
PHONE (248) 355-2150  
FAX (248) 355-2170



## II. the Application Is Without Merit

The application for leave to appeal is without merit. The Michigan Employment Relations Commission did not err in denying the Attorney General the right to intervene; that decision is not erroneous as a matter of law nor is it outside the Commission's discretion.

### A. The Right of the Attorney General to Intervene Is Not Absolute

1.

(a)

The right of the AG to intervene is broad but not unlimited:

“We recognize that the Attorney General’s statutory discretion to intervene in cases ‘is not unlimited.’” *In re Intervention of Attorney Gen*, 326 Mich 213, 217; 40 NW2d 124 (1949).

Indeed,

“[c]ourts acting within their inherent powers of judicial control . . . may restrain the intervention of the attorney general” when there is a showing that such intervention would be “clearly inimical to the public interest . . .” *Id. People v Unger*, 278 Mich App 210, 260-261 (2008)

Recognizing some disparity in authority on the subject, in *AG v PSC*, 243 Mich App 487 (2000), the Court of Appeals confirmed the right of the AG to participate in “administrative proceedings against state agencies.” So the AG may participate in proceedings before the Liquor Control Commission or the Public Service Commission. No case has ever held that the AG may participate in a proceeding before the Michigan Employment Relations Commission (except as counsel for a party. See, e.g., *Department of Mental Health* 11 MPER ¶ 29008).

MARK H. COUSENS  
ATTORNEY

26261 EVERGREEN ROAD  
SUITE 110  
SOUTHFIELD, MICHIGAN 48076  
PHONE (248) 355-2150  
FAX (248) 355-2170



(b)

Assuming, generally, that the AG may participate in proceedings before the Commission does not end the discussion. MCL 14.101—the only statute on which the AG can rely here (14.28 limits intervention to the courts)—also limits intervention to “actions.” *A representation proceeding is not an “action.”* It is a fact finding process in which MERC determines if an election is requested, is supported by the requisite showing of interest and whether there is a community of interest in the proposed unit.

B. The AG Lacks Standing

1.

The AG is required to have standing as a condition of intervention. The AG cannot participate in a matter out of whim; he must meet the same standing and “case in controversy” obligations imposed on the parties:

“We are of the opinion that the statutory right of the attorney general to intervene in any action in which the State is interested (1 Comp. Laws 1929, § 187) does not give the State any greater or different rights than are possessed by a private party who intervenes as a litigant in a case of this character. It may be noted that it is not contended otherwise in the attorney general's brief; but the question is raised in an objection filed in behalf of the State to the order of the trial judge for the issuance of the writ.”

*John Wittbold & Co v Ferndale*, 281 Mich 503 (1937). (Emphasis added.)

In *Federated Ins Co v Oakland County Rd Comm'n*, 475 Mich 286 (2006) the AG sought to intervene in the Supreme Court when neither of the parties had, themselves, sought leave to appeal. Rejecting the assertion that his right to intervene was, essentially absolute, the Court stated that:

“At issue in this case is whether the Attorney General can appeal as an intervenor in this Court on behalf of the people and a state agency when the named losing parties did not themselves seek review in this Court.

MARK H. COUSENS  
ATTORNEY

26261 EVERGREEN ROAD  
SUITE 110  
SOUTHFIELD, MICHIGAN 48076  
PHONE (248) 355-2150  
FAX (248) 355-2170



Notwithstanding the Attorney General's broad statutory authority to intervene in cases, we hold that to pursue such an appeal as an intervenor there must be a justiciable controversy, which in this case requires an appeal by an 'aggrieved party.' Because neither of the losing parties below filed a timely appeal, and because the Attorney General does not represent an aggrieved party for purposes of this case, there is no longer a justiciable controversy. Under such circumstances, the Attorney General may not independently appeal the Court of Appeals judgment. We therefore dismiss this appeal."

In *Federated*, the AG lacked standing because neither party—the actual “aggrieved parties”—had sought leave to appeal to the Supreme Court. In dismissing the intervention by the AG, the Court made clear that the AG does not have the right to participate in a matter simply it interests him. Rather, he must have standing and there must be a justiciable controversy. *Id.*, 292. See also *Mich Educ Ass' n v Superintendent of Pub Instruction*, 272 Mich App 1, 9-10 (2006) (To the extent one might read MCL 14.101 or MCL 14.28 as allowing the Attorney General to prosecute an appeal from a lower court ruling without the losing party below also appealing, and without the Attorney General himself being or representing an aggrieved party, the statutes would exceed the Legislature's authority because, except where expressly provided, this Court is not constitutionally authorized to hear nonjusticiable controversies).

2.

(a) The AG lacks standing because the persons whose interest he allegedly advocates (executives and “no” voters) lack standing in a representation proceeding.

This is a representation case. As such, there are two parties—an employer and a petitioning labor organization. Those are the sole participants. The Commission's rules make clear that intervention in a representation case requires a showing of interest. R423.145. An intervenor must present not less than a 10% showing to be heard. The AG does not present any tangible support.

MARK H. COUSENS  
ATTORNEY

26261 EVERGREEN ROAD  
SUITE 110  
SOUTHFIELD, MICHIGAN 48076  
PHONE (248) 355-2150  
FAX (248) 355-2170



A party without standing may not intervene in a MERC proceeding. *City of Detroit Fire Department*, 9 MPER ¶ 27011 (1995) (As an individual employee and member of the bargaining unit, it is clear that Charging Party has no standing in the first place to raise such issues, since the bargaining obligation under PERA is owed by the collective bargaining representative to the employer and vice versa, and not to individual employees.)

(b) The AG purports to represent persons *who would have no right to participate in the proceedings were they to appear in person*. First, the AG claims that the view of executives (Deans) should be heard. Second, he claims that the view of “no” voters should be heard. Neither view would be relevant were it offered. The sole question in a unit dispute is “community of interest” and the make up of the proposed bargaining unit. Individual members of the proposed bargaining unit cannot argue that there should not be an election at all. And executives or supervisors cannot be heard at all; MCL 423.210(a) prohibits representatives of an employer from interfering with the exercise of rights under PERA. The views of such persons are not relevant in a representation matter.

The AG lacks standing because the persons he purports to represent would not have standing. They cannot enter into a representation proceeding for the purpose of trying to prevent an election. Neither can he.

### C. Permitting Intervention Would Cause Chaos

The motion here is submitted by the Attorney General but, if granted, would open the possibility of other persons intervening in representation cases simply because they want to prevent an election.

The AG asserts that he wants to present argument on behalf of persons opposed to collective bargaining for Graduate Student Research Assistant. Such persons have no role in

MARK H. COUSENS  
ATTORNEY

26261 EVERGREEN ROAD  
SUITE 110  
SOUTHFIELD, MICHIGAN 48076  
PHONE (248) 355-2150  
FAX (248) 355-2170



a representation proceeding. There are nay-sayers in every representation case. Individuals may object to the unit description, the inclusion of some jobs and exclusion of others. Some individuals who oppose any public employees being represented for collective bargaining may object merely to the holding of an election. Allowing such persons to participate as parties would turn factfinding proceedings into platforms for airing of polemics. It would open the door to the sharing of every view no matter how irrelevant or how obstructionist. It would permit a single person to prevent an election simply because that person had some objection no matter how invalid.

PERA guarantees public employees the right to organize and bargain collectively. MCL 423.209. Interlopers in a representation process would be able to so contaminate proceedings, so delay and obstruct proceedings, that this statutory right could be rendered nugatory by a single intransigent person. Intervention without a showing of interest is prohibited for that very reason. This situation is no different.

### **III. There Is No Irreparable Injury**

The Attorney General has failed to demonstrate any basis for a stay of proceedings. He engages in mere speculation about the proceedings before MERC and is unable to provide any evidence which, if true, suggests that anyone will suffer an irreparable injury as a consequence of continuing the proceeding.

#### A. . . Speculation about the Trial

The Attorney General speculates on the nature of the trial before the Administrative Law Judge. His contention is not just wrong; it is completely devoid of factual support.

MARK H. COUSENS  
ATTORNEY

26261 EVERGREEN ROAD  
SUITE 110  
SOUTHFIELD, MICHIGAN 48076  
PHONE (248) 355-2150  
FAX (248) 355-2170



1.

In granting the GEO motion for reconsideration, the Michigan Employment Relations Commission directed that the hearing process before the Administrative Law Judge be complete and comprehensive. The order states in part:

“The motion for reconsideration is granted, the petition for a representation election filed by the Graduate Employees Organization/AFT, is reinstated, and this matter is referred to a senior administrative law judge for an expedited evidentiary hearing. At such hearing, the petitioner shall have the burden of proving, by substantial, competent evidence, such material change of circumstances since the decision in Regents of the University of Michigan, 1981MERC Lab Op 777, as to warrant a finding that some or all of the Graduate Student Research assistants are employees of the University of Michigan and are entitled to the protection and benefits of the Public Employment Relations Act. The Commission will require competent proofs to each category of employee to show that the facts are different from our previous decision.”

Slip op., 7.

The Attorney General seems to think that the parties will somehow so distort the record that a fantasy will be spun rather than facts. The Commission order gives the Administrative Law Judge authority to, on her own motion, secure evidence including compelling testimony of witnesses. This process will not be a charade; it will be a reasonable inquiry into the facts. Any other suggestion is complete conjecture.

2.

Speculation will not support a request for extraordinary relief. The Attorney General is seeking what amounts to an injunction. As such, he has to demonstrate real, not imagined, irreparable injury. *Pontiac Fire Fighters Union Local 376 v City of Pontiac*, 482 Mich 1, 11 (2008) (Speculation about harm caused by layoffs insufficient to justify injunction).

MARK H. COUSENS  
ATTORNEY

26261 EVERGREEN ROAD  
SUITE 110  
SOUTHFIELD, MICHIGAN 48076  
PHONE (248) 355-2150  
FAX (248) 355-2170



The Attorney General has no evidence—because there is none—that the trial before the ALJ will be anything other than a fruitful investigation into the facts. As such, his demand to participate is without merit.

**B. Speculation about Collective Bargaining**

The Attorney General speculates about the impact of collective bargaining by Research Assistants. The speculation is without any validity.

First, the Attorney General cites to nothing—no study, no opinion—to support his contention that collective bargaining for RAs will somehow compromise the excellence of the University of Michigan. This assertion is devoid of intellectual support. And it is utterly false.

Second, collective bargaining for Research Assistants will be a mutual process between GEO and the University in which the “educational sphere” will be respected. See *Central Michigan University Faculty Association v Central Michigan University*, 404 Mich 268 (1978).

Finally, the impact of collective bargaining is not relevant to the question of whether public employees may bargain. That right is created by statute and “adverse impact” is not a basis to deny it. Nothing supports the wild claims made by the Attorney General. Therefore there is no factual basis for a claim that his intervention is necessary to prevent harm.

**IV. Intervention Compromises the Constitutional Authority of the University Regents**

The premise of the Attorney General’s motion to intervene is that the University of Michigan is not capable of governing itself. The AG asserts that there are those who disagree with the policy adopted by the University Regents. That claim presupposes that the Regents are not authorized to make such policy; that whenever someone disagrees with policy the AG, or someone else, may challenge the Regents’ decisions.

MARK H. COUSENS  
ATTORNEY

26261 EVERGREEN ROAD  
SUITE 110  
SOUTHFIELD, MICHIGAN 48076  
PHONE (248) 355-2150  
FAX (248) 355-2170



The Constitution grants to the Regents the sole authority to govern the University:

“The regents of the University of Michigan and their successors in office shall constitute a body corporate known as the Regents of the University of Michigan; the trustees of Michigan State University and their successors in office shall constitute a body corporate known as the Board of Trustees of Michigan State University; the governors of Wayne State University and their successors in office shall constitute a body corporate known as the Board of Governors of Wayne State University. Each board shall have general supervision of its institution and the control and direction of all expenditures from the institution's funds. Each board shall, as often as necessary, elect a president of the institution under its supervision. He shall be the principal executive officer of the institution, be ex-officio a member of the board without the right to vote and preside at meetings of the board. The board of each institution shall consist of eight members who shall hold office for terms of eight years and who shall be elected as provided by law. The governor shall fill board vacancies by appointment. Each appointee shall hold office until a successor has been nominated and elected as provided by law.”

Const. Art. VIII, § 5

For reasons known only to him, the AG has decided that the actions of the Regents are unacceptable; that he should be authorized to contest the determination of the Regents.

The Attorney General may somehow believe that collective bargaining for Research Assistants is not a good idea. But that decision does not belong to him; it belongs to the Regents and MERC. He seeks to invade the unique and exclusive authority of the Regents to the “general supervision” of the University. The motion by the AG seeks to exercise authority that is granted exclusively to the Regents pursuant to Article VIII, section 5 of the Constitution.

MARK H. COUSENS  
ATTORNEY

26261 EVERGREEN ROAD  
SUITE 110  
SOUTHFIELD, MICHIGAN 48076  
PHONE (248) 355-2150  
FAX (248) 355-2170



## Conclusion

The premise on which the Attorney General proceeds is that (a) the University of Michigan should oppose the election but is not; (b) people opposed to collective bargaining will not be heard. Neither premise is relevant; indeed, neither makes sense.

The Attorney General contends that "...the interests and rights of the consumers and the people of the state, while not direct parties thereto, should always be considered, respected and protected" citing MCL 423.1. However, this statute does not apply here.

The referenced clause comes from the Labor Relations and Mediation Act, MCL 423.1, et seq., a statute enacted *three decades before the Public Employment Relations Act* and applicable only in the private sector. See MCL 423.(f) ("Employer'...shall not include...the state or any political subdivision thereof..."). The applicable statute, the Public Employment Relations Act, MCL 423.201 et seq., states that the public policy of Michigan is to "...provide for the mediation of grievances and the holding of elections; to declare and protect the rights and privileges of public employees..." The statute then declares those rights to be to "...organize together or to form, join or assist in labor organizations, to engage in lawful concerted activities for the purpose of collective negotiation or bargaining or other mutual aid and protection, or to negotiate or bargain collectively with their public employers through representatives of their own free choice."

This is the law applicable here. This is the law that the Michigan Employment Relations Commission will apply. And this is why the Attorney General has no role in this process. His effort is designed to interfere with, rather than support, a statutory process.

\*\*\*

MARK H. COUSENS  
ATTORNEY

26261 EVERGREEN ROAD  
SUITE 110  
SOUTHFIELD, MICHIGAN 48076  
PHONE (248) 355-2150  
FAX (248) 355-2170



The Court lacks jurisdiction. The Attorney General lacks standing. The Attorney General lacks a factual basis for a request for stay. This application should be denied.



---

MARK H. COUSENS (P12273)  
Attorney for the Appellee GEO, AFT, AFL-CIO  
26261 Evergreen Road, Ste. 110  
Southfield, MI 48076  
(248) 355-2150

#### CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon Christine Gerdes at the University of Michigan, 503 Thompson St # 5010, Fleming Admin Bldg., Ann Arbor, Michigan 48109; David Fink at David Fink & Associates, 100 West Long Lake Road, Suite 111, Bloomfield Hills, Michigan 48304; Kevin J. Cox, at the Michigan Dept. of Attorney General, 3090 W. Grand Boulevard, Detroit, Michigan 48202 by U.S. First Class Mail on February 7, 2012.



---

Jill M. Lowing

MARK H. COUSENS  
ATTORNEY

---

26261 EVERGREEN ROAD  
SUITE 110  
SOUTHFIELD, MICHIGAN 48076  
PHONE (248) 355-2150  
FAX (248) 355-2170



**Court of Appeals, State of Michigan**

**ORDER**

University of Michigan v Graduate Employees Organization/AFT

Docket No. 307959

LC No. R11 D-034

Douglas B. Shapiro  
Presiding Judge

Jane E. Markey

Jane M. Beckering  
Judges

---

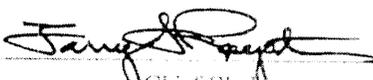
The Court orders that the motion for immediate consideration, the motion to stay proceedings and the application for leave to appeal are DISMISSED for lack of jurisdiction. This Court lacks jurisdiction to entertain an appeal from an interlocutory order of the MERC. MCR 7.203(B)(3); MCL 423.216(e); *Harper Hosp Employees' Union Local No. 1 v Harper Hosp*, 25 Mich App 662; 181 NW2d 566 (1970). MCL 24.301 does not confer jurisdiction on this Court because the current proceeding before the MERC is not a contested case. MCL 24.203(3); *McBride v Pontiac School Dist (On Remand)*, 218 Mich App 105, 122; 553 NW2d 646 (1996); *Michigan Ass'n of Public Employees v Michigan Employment Relations Comm'n*, 153 Mich App 536, 549; 396 NW2d 473 (1986).



A true copy entered and certified by Larry S. Royster, Chief Clerk, on

**JAN 25 2012**

Date

  
Chief Clerk