

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

IN THE MATTER OF:

REGENTS OF THE UNIVERSITY OF
MICHIGAN,

No. R11 D-034

Respondent,

and

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

Petitioner-Labor Organization.

Christine M. Gerdes (P67649)
Suellyn Scarnecchia (P33105)
Attorneys for the University of Michigan
503 Thompson Street
Ann Arbor, MI 48109
(734) 647-1392

MICHIGAN ATTORNEY
GENERAL'S MOTION TO
INTERVENE

Mark H. Cousens (P12273)
Attorney for GEO, AFT, AFL-CIO
2621 Evergreen Road, Suite 110
Southfield, MI 48076
(248) 355-2150

Bill Schuette
Attorney General – Intervener

Richard A. Bandstra (P31928)
Chief Legal Counsel

Kevin J. Cox (P36925)
Dan V. Artaev (P74495)
Assistant Attorneys General
Michigan Department of Attorney General
3030 West Grand Boulevard
Detroit, MI 48202
(313) 456-0080

Bill Schuette, in his official capacity as Attorney General of Michigan, seeks to intervene in this case under MCL 14.101 and MCL 14.28 because, in his judgment, it involves matters of significant public interest, and in support states the following:

1. On December 13, 2011, the Commission is expected to vote on whether to direct an Administrative Law Judge (ALJ) to conduct a factual inquiry into whether Graduate Student Research Assistants (GSRAs) at the University of Michigan are “employees” of the University.
2. This case has the potential to significantly damage the University of Michigan’s reputation as a nationally recognized research institution, to the detriment of all Michigan citizens who support and value the University as one of our country’s elite leading institutions of higher education.
3. Considering the significant impact of the University on the entire State of Michigan as a center of scholarship that creates jobs, generates substantial tax revenue, and attracts millions of dollars in research grants, any proceeding that may negatively affect the University’s competitiveness is a matter of public interest.
4. The University has been incredibly successful as a research institution for the past 30 years, and the Commission should decline the invitation to compromise that success and reconsider the same issue it had already decided in 1981. Because this is a matter that will impact important

state interests, the Attorney General requests to intervene and oppose reconsideration at the December 13, 2011 Commission meeting.

5. In the alternative, if the Commission grants the motion for reconsideration and orders an ALJ to conduct fact finding, the Attorney General requests to intervene to ensure all of the facts are presented through the benefit of the full adversarial process.
6. In 1981, the Commission addressed the same issue of whether GSRAs are employees subject to unionization, and after factually intensive inquiry by the ALJ, the Commission adopted his recommended decision that the GSRAs were students and not employees of the University.
Regents of the University of Michigan, 1981 MERC Lab Op 777.
7. In April 2011, the Graduate Employees' Organization (Organization) filed a petition with the Commission seeking certification as the exclusive representative for the GSRAs. The University's Board of Regents passed a resolution recognizing the GSRAs to be employees. The Commission issued an opinion on September 14, 2011 that rejected the petition, correctly determining that the logic and result of the 1981 decision still applied, there having been no material change in the facts and circumstances surrounding the GSRAs' work.
8. The Organization sought reconsideration, arguing that the Commission needed to consider all of the facts. The University's response, constrained by the Regents' majority resolution, did not actively oppose

it, but detailed that the facts today appear to be virtually identical to those in 1981. The Commission is expected to vote on whether to grant the motion and if it does, it will order an ALJ to conduct a factual inquiry into whether the GSRAs are employees.

9. At least nineteen current and former deans and faculty of the University have expressed concern that potential unionization will compromise the integrity of the mentor-mentee relationship essential to a successful and prestigious doctoral program. The imposition of a third party into the educational process could make the University less attractive as a research institution and compromise its ability to attract the top students, top researchers, and significant private and public research funding. (Letter of Deans to Provost, June 24, 2011, *available at* <http://www.mackinac.org/archives/2011/deansletter.pdf>.)
10. The record shows that there is a significant number of GSRAs opposed to being classified as employees subject to unionization.
11. Neither the deans and faculty, nor the GSRAs opposed to classification as employees of the University subject to unionization will be represented before the Commission or the ALJ or otherwise be able to present the facts. Whether or not the Commission grants the motion for reconsideration or the ALJ overturns the Commission's 1981 decision, this matter has serious implications for the University as a major research institution, and consequentially for all of Michigan's citizens.

12. Absent the intervention of the Attorney General on behalf of the people of Michigan, the Commission and the ALJ will hear only one position – that the GSRA are employees of the University. Unlike in 1981, the University is constrained from opposing this position because of the Regents’ majority vote. Both sides being in agreement on the pivotal issue, there would be no adversarial process to develop the record whatsoever at any hearing.
13. The University of Michigan is a major research institution, ranking second in the nation in terms of total research expenditures. (Response to Petitioner’s Motion for Reconsideration, University of Michigan, Oct 17, 2011, p 4.) External funding supports a large majority of GSRA studies – with total research funding exceeding \$1.14 billion in fiscal year 2010. (Office of the Vice President for Research, Quick Facts, <http://research.umich.edu/quick-facts>.)
14. The University of Michigan is an essential component of the University Research Corridor – a coalition between the University of Michigan, Michigan State University, and Wayne State University that has generated an “economic impact” of \$14.8 billion in 2009 for the State of Michigan. (2010 Empowering Michigan Report, *available at* <http://urcmich.org/economic/2010/2010econimpact-report.pdf>.) Even as state funding support dropped, Michigan’s research universities remained the largest cluster in the U.S. in terms of enrollment, and they

ranked third in terms of high-tech degrees. (*Id.*) The research corridor has continued to provide a significant fiscal impact on Michigan – for example, over 550,000 research alumni live in Michigan, collectively earning about \$26 billion; generating over \$400 million in state tax revenue for 2009. (*Id.*) Any proceeding that may affect the University’s ability to continue to attract research funding and play an integral role as a member of the University Research Corridor implicates a number of state interests.

15. The excellence of the University, in so many ways, will be seriously jeopardized if its status as a research institution, with the funding that status brings, is undermined.
16. Attorney General Bill Schuette is the chief law enforcement officer for the State of Michigan and has a duty to ensure that the laws of the state are followed. Const 1963, art 5, §§ 3, 21.
17. When the Attorney General determines, in his own judgment, that the interests of the state require intervention, he may “intervene in and appear for the people of this state in any other court or tribunal, in any cause or matter, civil or criminal.” MCL 14.28; *see also* MCL 14.101.
18. Courts give great deference to the Attorney General’s unconditional statutory right to intervene in matters of state interest. *Kelley v Gremore*, 8 Mich App 56, 59; 153 NW2d 377 (1967).

19. In absence of a showing that the Attorney General's intervention is clearly contrary to the public interest, the Attorney General should be permitted to intervene. *Id.*; *VanStock v Township of Bangor*, 61 Mich App 289, 299; 232 NW2d 387 (1975).
20. The Attorney General may intervene in administrative proceedings at any stage. *Kelley v Thayer*, 65 Mich App 88, 92-93; 237 NW2d 196 (1976).
21. The Attorney General has determined, in his judgment, that intervention in this matter is necessary to protect significant state interests. These proceedings will directly affect the State and a number of citizens who are students, professors, or are otherwise affiliated with the University of Michigan. The State, and correspondingly the taxpayers of this State, expend a significant amount of money for University funding, and more specifically, the funding of research at the University. The results of this proceeding may have a significant impact on the University's ability to compete as a major research university and thus may affect both the economy of the State, and the general well-being of all of the citizens and residents of the State.
22. Given the absence of adversity on the issue of whether GSRA are employees between the Organization and the University – the only two parties to this proceeding – the GSRA students and faculty opposing

GSRA employee status will not be able to present facts and cross-examine witnesses.

23. Attorney General intervention is proper when significant matters of state interest and public policy are involved, and when a proceeding may affect unrepresented parties. *Syrkowski v Appleyard*, 122 Mich App 506, 513; 333 NW2d 90 (1983), *rev'd on other grounds* 420 Mich 367; 362 NW2d 211 (1985). That is exactly the case here.
24. As intervener, the Attorney General will ensure all the relevant facts and arguments are presented to the Commission and the ALJ in the absence of true adversity between the Organization and the University. The position that GSRA's are not employees of the University is consistent with the Commission's findings in 1981, and is still meritorious in 2011. Considering the significance of the GSRA employment issue to the taxpayer-funded University, the State, and the People of the State of Michigan, it is clear that the Attorney General's decision to intervene cannot be inimical to the public interest.
25. The Attorney General has properly determined that these proceedings involve matters of great state interest and that intervention is in the best interest of all of Michigan's citizens. The Attorney General's intervention will assure a balanced presentation of all of the necessary facts that the Commission and the ALJ will need to make a well-informed decision on the important issue under consideration. The

Commission should defer to the Attorney General's judgment and allow intervention.

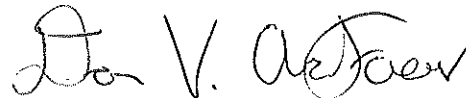
For these reasons, the Attorney General respectfully requests the Commission grant his motion to intervene, enter a notice of intervention into the official record of the captioned case, and afford him full party status in these proceedings for all purposes.

Under Commission Rule 161(4), 2002 AACRS, R 423.161(4), the Attorney General respectfully requests oral argument.

Respectfully submitted,

Bill Schuette
Attorney General

Richard A. Bandstra (P31928)
Chief Legal Counsel



Kevin J. Cox (P36925)
Dan V. Artaev (P74495)
Assistant Attorneys General

Michigan Dep't of Attorney General
3030 West Grand Boulevard
Detroit, MI 48202
(313) 456-0080

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