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January 18, 2011

Clerk of the Court
Kent County Circuit Court
180 Ottawa, NW, Ste. 2400
Grand Rapids, MI 49503

Re: ***Chris Jurrians, et al, -and- Kent Intermediate School District, et al;*** **Case No. 10-12758-CL**
Honorable James R. Redford

Dear Clerk:

Enclosed for filing in the above-referenced matter please find the original and a Judge's Copy of:

- Notice of Hearing
- Defendants' Motion for Summary Disposition
- Defendants' Brief in Support of its Motion for Summary Disposition
- Affidavit of Kevin Konarska
- Proof of Service

Also enclosed is a Notice of Motion card and a check in the amount of $20.00. Thank you for your assistance.

Very truly yours,

MILLER JOHNSON

By Craig A. Mutch ls
Craig A. Mutch

CAM:ls
Enclosures
cc: Patrick J. Wright
Arthur R. Przybylowicz
Gregory M. Steimel
Kent Intermediate School District

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

CHRIS JURRIANS, et al,

Plaintiffs,

Case No. 10-12758-CL
HON. JAMES R. REDFORD

-and-

KENT INTERMEDIATE SCHOOL DISTRICT, et al,

Defendants.

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NOTICE OF HEARING

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DEFENDANT-SCHOOLS' MOTION FOR SUMMARY DISPOSITION

Defendants Kent Intermediate School District, Kent Intermediate School District Board, Byron Center Public Schools, Board of Education of the Byron Center Public Schools, Comstock Park Public Schools, Comstock Park School Board, School District of Godfrey-Lee, Godfrey-Lee Board of Education, Godwin Heights Public Schools, Godwin Heights Board of Education, Grandville Public Schools, Board of Education of the Grandville Public Schools, School District of Kenowa Hills, Kenowa Hills Public Schools Board of Education, Lowell Area

Schools, Board of Education of the Lowell Area Schools, Northview Public Schools, Board of Education of the Northview Public Schools, Rockford Public Schools, and Rockford Board of Education of the Rockford Public Schools ("Defendant-Schools"), by their attorneys, Miller Johnson, move pursuant to MCR 2.116(C) (4) and (7) for summary disposition on the following grounds:

1. Plaintiffs do not have standing;
2. The Michigan Employment Relations Commission has exclusive jurisdiction over the unfair labor practice alleged in the Complaint; and
3. Plaintiffs' Complaint was filed outside of the applicable six-month statute of limitations.

This motion is supported by the Complaint, the Affidavit of Kevin Konarska, and the Brief in Support of Defendants' Motion for Summary Disposition.

MILLER JOHNSON
Attorneys for Defendant-Schools

Dated: January 18, 2011

By _____
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DEFENDANT-SCHOOLS' BRIEF IN SUPPORT OF ITS MOTION FOR SUMMARY DISPOSITION

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Introduction

Plaintiffs are taxpayers residing in Kent County, Michigan[1], who have sued the Kent Intermediate School District, nine of its constituent local districts, and the unions who represent school staff employed in those school districts, alleging that the schools and the unions violated the Public Employment Relations Act ("PERA") by entering into a collective bargaining agreement that included a provision on privatization. Plaintiffs' lawsuit should be dismissed under MCR 2.116(c)(4) and (7) because (1) Plaintiffs have no standing; (2) the Michigan Employment Relations Commission ("MERC") has exclusive jurisdiction over the unfair labor practice alleged in the Complaint; and (3) Plaintiffs' Complaint was filed outside of the applicable six-month statute of limitations.

Statement of Facts

On or about March 8, 2010, the Kent Intermediate School District Board and the boards of nine constituent local districts[2] ("the Schools") entered into a one-year Collaborative Settlement Agreement ("the Collaborative Agreement") with the bargaining representatives of their unionized employees ("the Association"). The Collaborative Agreement was intended "to recognize the financial situation that all districts now face and the need to continue to provide high quality instruction to all students of Kent County." (Complaint, Ex. F). To reach that common goal, the Association agreed to significant concessions, including a wage freeze and – for the first time – employee contributions toward the cost of health insurance. (Complaint, Ex. F; Affidavit of Kevin Konarska ¶ 3). To date, the concessions on health care alone have resulted in over 1.8 million dollars in savings for the Schools. (Affidavit of Kevin Konarska ¶ 3).

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[1] None of the plaintiffs reside in any of the constituent local districts named as defendants in this lawsuit.

[2] Those constituent local districts are Byron Center Public Schools, Comstock Park Public Schools, Godfrey-Lee Public Schools, Godwin Heights Public Schools, Grandville Publics Schools, Kenowa Hills Public Schools, Lowell Public Schools, Northview Public Schools, and Rockford Public Schools.

When they entered into the Collaborative Agreement, none of the Schools had any intention of privatizing non-instructional services during the one-year term of the contract. (Kevin Konarska Affidavit ¶ 4). Because the Schools had no desire to privatize and in recognition of the significant concessions made by the Association, the Schools acquiesced to the Association's request to include language in the Collaborative Agreement affirming the Schools' position on privatization. That provision ("the privatization provision") states:

> **Privatization:** All districts agree not to privatize any KCEA/MEA unionized services for the life of this Agreement.

Despite the fact that the Schools had no intention of privatizing, Plaintiffs have brought the present lawsuit to strike the privatization provision from the Collaborative Agreement and to prohibit the inclusion of any such provisions in future agreements.

Argument

I. PLAINTIFFS LACK STANDING TO CHALLENGE THE TERMS OF THE COLLABORATIVE AGREEMENT.

As the Michigan Supreme Court recently held in *Lansing Sch Educ Ass'n v Lansing Bd of Educ*, 487 Mich 349, *10; --- NW2d --- (2010), a litigant only has standing when: (1) he/she has a legal cause of action; (2) he/she meets the requirements of the declaratory judgment rule; or (3) he/she has a special injury or right, or substantial 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. The plaintiffs in this case do not satisfy any of these tests. The Court therefore lacks jurisdiction and Plaintiffs' lawsuit should be dismissed under MCR 2.116(c)(4).

A. Plaintiffs Do Not Have A Legal Cause of Action.

From Plaintiffs' Complaint, it appears that they are attempting to bring a "taxpayer suit" under MCL 600.2041, which provides:

> An action to prevent the illegal expenditure of state funds or to test the constitutionality of a statute relating thereto may be brought... in the names of at least 5 residents of this state who own property assessed for direct taxation by the county wherein they reside.

1. Plaintiffs Cannot Sustain A Taxpayer Suit Because There Has Been No "Illegal Expenditure of State Funds."

a. *The Privatization Provision Does Not Require the Expenditure of State Funds.*

To maintain a taxpayer suit under MCL 600.2041, Plaintiffs must show that there has been an "illegal expenditure of state funds." This is fatal to Plaintiffs' claim because the privatization provision does not require the expenditure of any state funds; it merely provides that "all districts agree not to privatize any KCEA/MEA unionized services for [one year]." Plaintiffs may argue that the wages paid to employees who *could have been* replaced by private contract workers qualifies as an "expenditure," but the Schools had no intention or legal obligation to privatize regardless of the privatization provision. Accordingly, one cannot say that the privatization provision *caused* those expenditures.

b. *The Privatization Provision is Not "Unlawful."*

Plaintiffs also cannot show that any expenditures by Defendant-Schools were unlawful. As the Michigan Supreme Court has recognized, when taxpayer-plaintiffs file a complaint to restrain the unlawful expenditure of public funds, "it is still incumbent on the plaintiffs to establish that the threatened expenditure is unlawful." *Menendez v City of Detroit*, 337 Mich 476, 481; 60 NW2d 319 (1953), *citing Worden v City of Detroit*, 241 Mich 139; 216 NW 461 (1927). Plaintiffs' Complaint suggests that the Schools and the Association acted

unlawfully by including a "prohibited subject of bargaining" in the Collaborative Agreement, but, as explained below, there is nothing unlawful about the Schools' and the Association's actions.

In order to understand why including a "prohibited subject of bargaining" in a collective bargaining agreement is not "unlawful," one must first have a basic understanding of PERA. PERA governs collective bargaining between Michigan public employers and their employees. Under traditional labor law, there are only three categories of collective bargaining subjects: mandatory, permissive and illegal. The bargaining obligations of parties to a collective bargaining agreement depend upon which category the "subject of bargaining" falls into:

> A mandatory subject of bargaining is one over which the parties are required to bargain if it has been proposed by either party and neither party may take unilateral action on the subject absent an impasse in the negotiations. A permissive subject is one that the parties need not bargain over, but may bargain by mutual agreement and neither side may insist on bargaining to a point of impasse. In contrast, an illegal subject of collective bargaining is a provision that is unlawful under the collective bargaining statute or other applicable statutes.

Michigan State AFL-CIO v Michigan Employment Relations Commission, 212 Mich App 472, 486 (1995). A refusal to bargain collectively over a mandatory subject is an unfair labor practice under Section 10 of PERA, while the refusal to bargain over permissive or illegal subjects is not.

A 1994 amendment to Section 15 of PERA, which became effective March 30, 1995, delineates nine "prohibited" subjects of bargaining between a public school employer and its employees' bargaining representative. The amended Section 15 of PERA states, in relevant part:

> (2) A public school employer has the responsibility, *authority, and right to manage and direct on behalf of the public the operations and activities of the public schools* under its control.

> (3) Collective bargaining between a public school employer and a bargaining representative of its employees shall not include any of the following subjects:
>
> ***
>
> > (f) the decision of whether or not to contract with a third party with 1 or more noninstructional support services; or the procedures for obtaining the contract for noninstructional support services other than bidding described in this subdivision; or the identity of the third party; or the impact of the contract for noninstructional services on individual employees or the bargaining unit. However, this subdivision applies only if the bargaining unit that is providing the noninstructional support services is given an opportunity to bid on the contract for the noninstructional services on an equal basis as other bidders.
> >
> > ***
> >
> > (4) The matters described in subsection (3) are prohibited subjects of bargaining between a public school employer and a bargaining representative of its employees, and, for the purposes of this act, are within the sole authority of the public school employer to decide.

The amendment granted public school employers the sole authority to make decisions on "prohibited subjects," thereby precluding the possibility that a public school employer can be found to have committed an unfair labor practice by refusing to bargain over them. MCL 423.215(c); *Parchment School District*, 2000 MERC Lab Op 110, 45. However, prohibited subjects of bargaining have the same effect as illegal subjects of bargaining, and may not become an enforceable part of a collective bargaining agreement. *Metropolitan Council No 23 and Local 1277 v City of Center Line*, 414 Mich 642, 652; 327 NW2d 822 (1982).

Though prohibited subjects of bargaining are not enforceable, it is clearly lawful for parties to a collective bargaining agreement to discuss prohibited subjects of bargaining with one another. *Michigan State AFL-CIO v Employment Relations Comm*, 453 Mich 362, 380; 551

NW2d 165 (1996); *Detroit Police Officers Ass'n v City of Detroit*, 391 Mich 44; 214 NW2d 803 (finding that parties are not "explicitly forbidden from discussing matters which are illegal subjects of bargaining"). Moreover, the Michigan Supreme Court has implicitly recognized that parties may agree to bargain over prohibited subjects and include them in their agreements, finding that if they choose to do so, any such provisions in the agreement will simply not be enforced. *Metropolitan Council No 23 and Local 1277 v City of Center Line*, 414 Mich 642, 652; 327 NW2d 822 (1982). This is precisely what the Schools and the Association did in the present case. They lawfully discussed the issue of privatization, and included an unenforceable provision on that subject in the Collaborative Agreement. Accordingly, Plaintiffs cannot show that there has been an "unlawful" expenditure of funds.

2. Plaintiffs Cannot Sustain A Taxpayer Suit Because They Have Not Suffered Any Injury Through Increased Taxation.

It is well-settled that a "taxpayer suit" may only be brought when the alleged "illegal expenditure of state funds" subjects the plaintiff-taxpayers to substantial injury or loss through increased taxation. *Menendez v City of Detroit*, 337 Mich 476; 60 NW2d 319 (1953); *Rayford v City of Detroit*, 132 Mich App 248; 347 NW2d 210 (1984); *City of Grand Rapids v Kent County*, 96 Mich App 15; 292 NW2d 475 (1980); *Kaminskas v City of Detroit*, 68 Mich App 499 (1976); *Westen v City of Allen Park*, 37 Mich App 121; 194 NW2d 542 (1971). The Michigan Supreme Court in *Menendez*, 337 Mich at 482, explained:

> ...it is clearly recognized that prerequisite to a taxpayer's right to maintain a suit of this character against a unit of government is the threat that he will sustain substantial injury or suffer loss or damage as a taxpayer, through increased taxation and the consequences thereof. This is uniformly true of all the Michigan cases considering this subject.

Moreover, to maintain a taxpayer suit, the plaintiffs must allege with particularity *how* the illegal act will result in substantial injury; they may not rely on general, conclusory or speculative allegations that their taxes will increase. *Killeen v Wayne Cty Road Comm*, 137 Mich App 178, 190; 357 NW2d 851 (1984); *Kaminskas v City of Detroit*, 68 Mich App 499 (1976). The *Killeen v Wayne Cty Road Commission* case is illustrative. *Id.*

In *Killeen, id*, various public officials sued the Wayne County Road Commission ("the Road Commission") and the Association of Road Commission Administrators ("the Association"), after the Road Commission and Association entered into a six-year collective bargaining agreement. The plaintiffs alleged that the collective bargaining agreement would result in increased taxes and was "contrary to law and public policy," in that it attempted to circumvent new legislation and insulate certain Association personnel in high paying positions. *Id.* at 181, 190. The Court of Appeals, however, held that the plaintiffs lacked standing and rejected their request to void the collective bargaining agreement, explaining:

> The Court in *Menendez v Detroit* observed that taxpayer standing is contingent upon a showing of a 'threat that he will sustain substantial injury or suffer loss or damage as a taxpayer, through increased taxation and the consequences thereof.' The plaintiff must allege with particularity how the illegal act will result in such injury. In this case, plaintiffs' allegations that the collective bargaining agreement will result in increased taxation are general, conclusory and speculative. We hold that as such they are insufficient to confer standing under *Menendez*.

Id. at 190 (internal citations omitted.)

Plaintiffs have not alleged – with particularity or otherwise – that the privatization provision in the Collaborative Agreement will cause substantial injury through increased taxation, nor can they honestly make that allegation. The privatization provision in the

Collaborative Agreement has not had (and will not have) any effect whatsoever on Plaintiffs' taxes, much less the "substantial" increase that would be required to sustain a taxpayer suit.

First, as explained above, the Schools had no intention of privatizing non-instructional services, with or without the Collaborative Agreement, and nothing in PERA would have required them to do so. On the contrary, PERA clearly states that prohibited subjects of bargaining, including matters related to privatization, "are within the sole authority of the public school to decide."[3] MCL 423.215(4). And if any of the Schools had reconsidered and decided to privatize, they could have done so because – as all of the parties understood at the time they entered into the Collaborative Agreement – the privatization provision was not enforceable. *Metropolitan Council No 23*, 414 Mich at 652. Accordingly, the privatization provision could not possibly have a negative impact on taxpayers.

Moreover, Plaintiffs have not alleged that the privatization provision has caused any increase in their taxes; they merely allege that the Schools "receive state funding for education, since all of [the Schools] receive a 'foundation allowance,' which includes both local and state funds, for each enrolled student" and that Kent ISD receives a "state appropriation related to the provision of special education services." (Complaint ¶64). Because Plaintiffs have not alleged a substantial increase in their taxes or other such injury, they cannot maintain a "taxpayer suit" under MCL 600.2041.

B. Plaintiffs Cannot Meet The Requirements of the Declaratory Judgment Rule.

Plaintiffs also lack standing because they cannot meet the requirements of the declaratory judgment rule. MCR 2.605 provides:

> In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other

[3] Ironically, it is Plaintiffs – not the Association – who are interfering with the School's sole authority to decide matters related to privatization by filing this lawsuit.

> legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted. For the purpose of this rule, an action is considered within the jurisdiction of a court if the court would have jurisdiction of an action on the same claim or claims in which the plaintiff sought relief other than a declaratory judgment.

1. A Declaratory Ruling Is Inappropriate Because There Is No Actual Controversy.

The Michigan Supreme Court has held that "the existence of an 'actual controversy' is a condition precedent to invocation of declaratory relief." *Shavers v Kelly*, 402 Mich 554, 588-89; 267 NW2d 72 (1978). An "actual controversy" exists where a "declaratory judgment or decree is necessary to guide a plaintiff's future conduct in order to preserve his legal rights. *Shavers*, 402 Mich at 588-89; 267 NW2d 72 (1978); *City of Flint v Consumers Power Co*, 290 Mich 305, 310; 287 NW 475 (1939) (emphasis added). This rule is intended to prevent courts from deciding hypothetical issues. *Id.*

In the present case, there is no "actual controversy" because Plaintiffs do not need any sort of ruling from the Court in order to guide their future conduct or preserve their legal rights. *Id.* Plaintiffs are taxpayers; they are not parties to the Collaborative Agreement, and thus, they have no obligation to take any action whatsoever based on the privatization provision. Nor do the taxpayer-Plaintiffs have any "legal rights" that would be preserved by issuance of a declaratory ruling. Accordingly, they cannot show that there is an "actual controversy."

Moreover, there is no "actual controversy" because the parties to the disputed Collaborative Agreement – the Association and the Schools – agree that the privatization provision is not enforceable. And even if the Association and the Schools did disagree over the provision's enforceability, Defendant-Schools have no desire to privatize so there is no present dispute. Plaintiffs are effectively asking the Court to resolve the hypothetical issue of what

Defendant-Schools legal rights *would be if* (1) the Defendant-Schools wanted to privatize during the term of the Collaborative Agreement – which they do not; and (2) the Association disputed the Defendant-Schools legal right to do so based on the privatization provision. The Michigan Supreme Court has made it clear that the "actual controversy" requirement prevents courts from deciding such hypothetical issues under the guise of a declaratory judgment ruling. *Id.* at 589 (explaining that the "'actual controversy' requirement prevents a court from deciding hypothetical issues"); *see also, Citizens for Common Sense in Government v Attorney General*, 243 Mich App 43, 55-56; 620 NW2d 546 (2000) (finding no "actual controversy" where the plaintiff's claim was based on speculation about how a third party – the Secretary of State – would act if called upon to do so).

Because there is no "actual controversy" and an actual controversy is a condition precedent to a declaratory ruling, Plaintiffs do not meet the requirements of the declaratory judgment rule.

2. The Court Lacks Jurisdiction of the Underlying Controversy.

Plaintiffs also fail to meet the requirements of the declaratory judgment rule because the Court lacks jurisdiction over the underlying controversy. *Department of Natural Resources v Holloway Const Co*, 191 Mich App 704; 478 NW2d 677 (1991) (holding that to issue declaratory ruling, court must have jurisdiction of the underlying controversy). As explained in greater detail below, the Court lacks jurisdiction over the underlying controversy in this case because the MERC has exclusive jurisdiction over unfair labor practices. Accordingly, Plaintiffs have not met the requirements of the declaratory judgment rule and cannot establish standing.

C. Plaintiffs Do Not Have Any Special Injury Or Right, Or Substantial Interest, That Will Be Detrimentally Affected In A Manner Different From The Citizenry At Large.

For an individual citizen to have standing to assert a public right, the citizen must demonstrate "a substantial interest that will be detrimentally affected in a manner different from the citizenry at large." *House Speaker v Governor,* 443 Mich 560-572; 506 NW2d 190 (1993); *Menendez*, 337 Mich at 482 (noting that a private taxpayer, suffering no special grievance, is not a proper party plaintiff to restrain threatened official misconduct). In *Saginaw Firefighters Ass'n v Police and Fire Dep't Civil Service Comm*, 71 Mich App 240, 244-45; 247 N.W.2d 365 (1976), the Court of Appeals explained how this doctrine has been applied to taxpayers bringing suit to compel a governmental agency's compliance with legal obligations:

> Standing in a case involving a private citizen and a governmental agency has been consistently limited in Michigan. In *Home Telephone Co. v. Michigan Railroad Commission*, 174 Mich. 219, 140 N.W. 496 (1913), the Court set forth the Michigan view that private persons cannot redress grievances on behalf of the public. Only in cases where individual grievances are distinct from other members of the public may a private citizen proceed to judicial relief. Otherwise the task falls to those who have been specifically charged with the duty of interference. Later cases have continued to deny standing to taxpayers ... on the theory that their pecuniary detriment is either nominal or nonexistent (emphasis added).

In *Inglis v Public School Employees Retirement Board*, 374 Mich 10; 131 NW2d 54 (1964), a retired school employee sued the Michigan Public School Employees Retirement Board to compel payment of retirement benefits in a manner that complied with the School Employees Retirement Act, and to disregard public acts that the plaintiff believed to be unconstitutional. Because the plaintiff failed to allege that her present and future retirement benefits would be affected, the Michigan Supreme Court held that the plaintiff lacked standing and dismissed her lawsuit.

Like the plaintiff in *Inglis*, the taxpayer-Plaintiffs in the present case have not alleged any special injury or right distinct from the general public which entitles them to

standing in this case. Nor have Plaintiffs shown that they have a legal cause of action or meet the requirements of the declaratory judgment rule. Accordingly, Plaintiffs have not satisfied any of the requirements to establish standing and their lawsuit should be dismissed.

II. THIS COURT HAS NO JURISDICTION OVER PLAINTIFFS' CLAIM BECAUSE THE MICHIGAN EMPLOYMENT RELATIONS COMMISSION HAS EXCLUSIVE JURISDICTION UNDER THE PERA.

The Michigan Employment Relations Commission ("MERC") has exclusive jurisdiction to address the merits of unfair labor practice charges under PERA. MCL 423.216. Courts have uniformly recognized and respected this exclusive jurisdiction. See *Lamphere Schools v Lamphere Federation of Teachers*, 400 Mich 104, 118; 252 NW2d 818 (1977) ("The jurisdiction and authority of MERC to determine unfair labor practices were held by this Court to be exclusive."); *Van Buren Public School Dist v Wayne County Circuit Judge*, 61 Mich App 6, 14; 232 NW2d 278 (1975) ("It is clear that MERC has been given exclusive jurisdiction over all unfair labor practices."); *Rockwell v Board of Ed of School Dist of Crestwood*, 393 Mich 616, 640-641; 227 NW2d 736 (1975) (MERC alone has jurisdiction ... under the PERA). This statutory grant of exclusive jurisdiction must be protected because only MERC has the "administrative expertise to entertain and reconcile competing allegations of unfair labor practices and misconduct under the PERA." *Rockwell* at 630.

In *Lamphere, supra,* the court discussed the importance of MERC's exclusive jurisdiction over unfair labor practice claims. The court explained that involving the circuit courts in the public labor relations sector would seriously erode the jurisdiction of MERC.

> The circuit courts would be forced to make the same unfair labor practice determinations as to the federations heretofore exclusively reserved to MERC. The unpleasant specter of the courts and MERC sharing this authority, combined with the very real possibility of conflicting decisions, could only further confuse labor relations in the public sector.

Lamphere at 119. The court further stated that because the "PERA gives to MERC *and not to the courts* the primary responsibility to balance the competing equities when unfair labor practices or other misconduct have been committed," allowing courts to become involved in these determinations would seriously undercut the statutory responsibility given to the MERC. *Id.*(emphasis added).

There is, however, an exception to MERC's exclusive jurisdiction, provided by MCL 423.216(h). The statute provides as follows:

> The commission or any charging party shall have power, upon issuance of a complaint as provided in subdivision (a) charging that any person has engaged in or is engaging in an unfair labor practice, to petition any circuit court within any circuit where the unfair labor practice in question is alleged to have occurred or where such person resides or exercises or may exercise its governmental authority, for appropriate temporary relief or restraining order, in accordance with the general court rules, and the court shall have jurisdiction to grant to the commission or any charging party such temporary relief or restraining order as it deems just and proper. (emphasis added).

Section 16(h) thus grants standing to both the MERC and to a charging party in an action before the MERC to petition a circuit court for injunctive relief, so long as the relief is "just and proper." *Michigan Council 25 v City of Detroit,* 124 Mich App 791, 792; 335 NW2d 695 (1983). This exception to MERC's exclusive jurisdiction applies only when a charging party or the commission seeks injunctive relief *in conjunction with an unfair labor practice proceeding.* See *City of Detroit* at 792 (unions sought injunctive relief in connection with an unfair labor practice proceeding filed with MERC)*; Local 502 v County of Wayne,* 2006 WL 2547082, *1 (Mich App 2006) (union sought preliminary injunction to restore the status quo while its unfair labor practice charge was pending before the MERC). Further, Section 16(h) grants a circuit court jurisdiction only as to the necessity for injunctive relief pending a MERC hearing, *not* over the merits of any unfair labor practice claims. See e.g. *Lamphere* at 118-119.

Plaintiffs' Complaint contains only one count, which alleges a violation of Section 15(3)(f) of PERA. That provision of PERA sets forth the bargaining obligations of the parties, the violation of which constitutes an unfair labor practice. Plaintiffs have not made any effort to have MERC address their unfair labor practice allegations. Instead, Plaintiffs attempt to circumvent the exclusive jurisdiction of the MERC by having the circuit court address the merits of their unfair labor practice claim. Jurisdiction to address the merits of unfair labor practice charges under the PERA lies exclusively with the MERC and, while a circuit court may exercise limited jurisdiction where a charging party seeks appropriate injunctive relief, a court may not make any determinations regarding the merits of the PERA claim, because such determinations are reserved exclusively to the MERC.

Further, only a "charging party" or the Commission may petition a court for such injunctive relief in connection with a MERC proceeding. Plaintiffs in the present case have failed to pursue a MERC claim and may not avail themselves of the injunctive relief exception in Section 16(h). Because Plaintiffs' single claim is within the exclusive jurisdiction of the MERC, this court has no jurisdiction to determine the merits of the alleged PERA violation, and Plaintiffs' Complaint should be dismissed in its entirety for lack of subject matter jurisdiction, pursuant to MCR 2.116(C)(4).

III. PLAINTIFFS' LAWSUIT IS BARRED BY THE APPLICABLE STATUTE OF LIMITATIONS.

The only count in Plaintiffs' lawsuit alleges that the Schools and the Association bargained over and included in the Collaborative Agreement a "prohibited subject" in violation of PERA. Claims under PERA, however, must be filed within six months. MCL 423.216(a). Section 16(a) of PERA states:

> No complaint shall issue based upon any unfair labor practice occurring more than 6 months prior to the filing of

> the charge with the commission and the service of a copy thereof upon the person against whom the charge is made, unless the person aggrieved thereby was prevented from filing the charge by reason of service in the armed forces, in which event the 6-month period shall be computed from the day of his discharge.

Michigan courts have applied this six-month statute of limitations to claims filed in court alleging unfair labor practices. *Leider v Fitzgerald Ed Ass'n*, 167 Mich App 210, 216; 421 N.W.2d 635 (1988). The Schools and the Association entered into the Collaborative Agreement, which contained the privatization provision, on March 8, 2010. Plaintiffs did not file this lawsuit until December 15, 2010, over three months after the statute of limitations had expired and they still have not filed a charge with MERC. Accordingly, Plaintiffs lawsuit should be dismissed under MCR 2.116(c)(7).

Conclusion

For the reasons stated in this Brief and the accompanying Motion for Summary Disposition, Defendant –Schools respectfully request that the Court dismiss Plaintiff's lawsuit.

Miller Johnson

Attorneys for Defendants Kent Intermediate School District, et al

Dated: January 18, 2011

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MILLER JOHNSON
Attorneys for Defendants Kent Intermediate School District, et al
250 Monroe, N.W., Ste. 800
Grand Rapids, MI 49503
(616) 831-1700

AFFIDAVIT OF KEVIN KONARSKA

I, KEVIN KONARSKA, have personal knowledge of the facts set forth in this Affidavit and could testify competently to these facts if called to testify as a witness in Court.

1. I am employed by the Kent Intermediate School District Board as the Superintendent of Kent Intermediate School District ("Kent ISD").

2. In March 2010, Kent ISD and nine of its constituent local districts entered into a Collaborative Settlement Agreement ("the Collaborative Agreement") with the

representatives of their unionized employees ("the Association"). The duration of the Collaborative Agreement is one year.

3. In the Collaborative Agreement, the Association agreed to significant concessions, including a wage freeze and, for the first time, employee contributions toward health care insurance premiums. To date, the health care savings alone have totaled more than $1.8 million.

4. During negotiations related to the Collaborative Agreement, Kent ISD and the Association discussed the issue of privatization. Kent ISD had no intention of privatizing non-instructional services, and informed its constituent districts that if they planned to examine privatization, they should not pursue the Collaborative Agreement. Only the constituent districts that indicated that they had no intention of privatizing entered into the Collaborative Agreement.

Dated: January 18, 2011

Kevin A. Konarska

Kevin Konarska

Subscribed and sworn to before me
this 18 day of January, 2011

Debra Ann Metzger

Notary Public, State of Michigan, County of Kent
My Commission expires:
Acting in the County of Kent

DEBRA ANN METZGER
NOTARY PUBLIC, STATE OF MI
COUNTY OF KENT
MY COMMISSION EXPIRES Mar 6, 2015
ACTING IN COUNTY OF Kent

#1066098 - 11798.004 - 1/18/2011

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

CHRIS JURRIANS, et al,

Plaintiffs,

Case No. 10-12758-CL
HON. JAMES R. REDFORD

-and-

KENT INTERMEDIATE SCHOOL DISTRICT, et al,

Defendants.

Patrick J. Wright (P54052)
Attorney for Plaintiffs
Mackinac Center Legal Foundation
140 W. Main Street
Midland, MI 48640
(989) 631-0900

Arthur R. Przybylowicz (P26492)
Gregory M. Steimel (P34911)
Attorneys for Defendants Michigan Education Association
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P.O. Box 2573
East Lansing, MI 48826-2573
(517) 332-6551

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Dated: January 18, 2011

Kevin A. Konarska

Kevin Konarska

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this 18 day of January, 2011

Debra Ann Metzger

Notary Public, State of Michigan, County of Kent
My Commission expires:
Acting in the County of Kent

DEBRA ANN METZGER
NOTARY PUBLIC, STATE OF MI
COUNTY OF KENT
MY COMMISSION EXPIRES Mar 9, 2015
ACTING IN COUNTY OF Kent

#1066098 - 11798.004 - 1/18/2011

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

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Grand Rapids, MI 49503
(616) 831-1700

PROOF OF SERVICE

Linda Singstock hereby states that she is an employee of the law firm of Miller Johnson and that on the 18th day of January, 2011, she served a copy of the following:

- Notice of Hearing
- Defendants' Motion for Summary Disposition
- Defendants' Brief in Support of its Motion for Summary Disposition
- Affidavit of Kevin Konarska
- Proof of Service

upon the following via U.S. Mail:

Patrick J. Wright (P54052) Attorney for Plaintiffs Mackinac Center Legal Foundation 140 W. Main Street Midland, MI 48640	Arthur R. Przybylowicz (P26492) Gregory M. Steimel (P34911) Attorneys for Defendants Michigan Education Association 1216 Kendale Blvd. P.O. Box 2573 East Lansing, MI 48826-2573

I declare that the statements above are true to the best of my information, knowledge and belief.

Dated: January 18, 2011

Linda Singstock