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January 20, 2011

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Clerk of the Court
Kent County Circuit Court
180 Ottawa Avenue N.W.
Grand Rapids, MI 49503

Re: Jurrians et al. v Kent Intermediate School District et al.
Case No. 10-12758-CL

Dear Sir/Madam:

Enclosed please find for filing the Motion for Summary Disposition, Brief of Defendant Associations in Support of Their Motion for Summary Disposition, and Notice of Hearing for the above-entitled matter. Judge Redford's copy of the motion and brief, as well as the $20 filing fee, is also enclosed.

The Certificate of Service indicating that a copy of same has been sent to Mr. Wright and Mr. Mutch is also enclosed.

Thank you for your assistance in this matter.

Very truly yours,

Arthur R. Przybylowicz
General Counsel

/dld

Enclosures

cc: Patrick J. Wright, Esq.
Craig A. Mutch, Esq.

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

CHRIS JURRIANS, GAIL SCHUILING, LILA DELINE, RINA SALA-BAKER, and TOM NORTON,

Plaintiffs,

v

KENT INTERMEDIATE SCHOOL DISTRICT et al.,

Defendants.

CASE NO. 10-12758-CL

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**MOTION FOR SUMMARY DISPOSITION OF DEFENDANT ASSOCIATIONS**

Defendants Kent County Education Association, Byron Center Educational Support Personnel Association, Byron Center Education Association, Comstock Park Educational Employees Association, Godwin Heights Support Staff Association, Grandville Educational Support Personnel Association, Kenowa Hills Education Association, Kenowa Hills Support Staff Association, Lowell Education Association, Lowell Educational Support Personnel Association, Rockford Education Association, and Rockford Educational Support Personnel Association (hereinafter, "Defendant Associations"), through their attorneys, move this Honorable Court pursuant to MCR 2.116(C)(5) for summary disposition, because Plaintiffs lack standing to pursue this action; pursuant to MCR 2.116(C)(4), because this Court lacks subject matter jurisdiction of the dispute; and MCR 2.116(C)(7), because the action was filed after the expiration of the applicable statute of limitations.

Defendant Associations request that this Court grant their Motion for Summary Disposition and award costs against Plaintiffs.

Respectfully submitted,

January 20, 2011

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**BRIEF OF DEFENDANT ASSOCIATIONS IN SUPPORT OF THEIR MOTION FOR SUMMARY DISPOSITION**

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## STATEMENT OF FACTS

Plaintiffs filed their Complaint on or about December 15, 2010, seeking a declaratory judgment that a provision in a collaborative settlement agreement was illegal and requesting the entry of a permanent injunction from the inclusion of that provision in future collective bargaining agreements. (Plaintiffs' Complaint, ¶ 67-68.) The Complaint named as Defendants 10 Kent County school districts and their boards of education, 12 associations that represent employees in those school districts, and 12 local presidents of those associations. Plaintiffs thereafter filed a "Voluntary Dismissal without Prejudice," dated December 30, 2010, which voluntarily dismissed the 12 named individual defendants.

The Complaint alleges that each of the Plaintiffs is a taxpayer who resides within the Kent Intermediate School District. (Plaintiffs' Complaint, ¶ 4-8.) Significantly, the Complaint does not allege that any of the Plaintiffs are parties to the collective bargaining agreements, that the terms of the collective bargaining agreement apply directly to them, or that they have any greater interest in the determination of the lawfulness of the collective bargaining agreements as any other taxpayer in the Kent Intermediate School District.

Defendant Associations file this Motion for Summary Disposition pursuant to MCR 2.116(C)(5), because the Plaintiffs do not have standing to bring this lawsuit; pursuant to MCR 2.116(C)(4), because the matter is within the exclusive jurisdiction of the Michigan Employment Relations Commission; and MCR 2.116 (C)(7), because it is barred by the applicable statute of limitations.

## ARGUMENT

### I. PLAINTIFFS DO NOT HAVE STANDING TO PURSUE THIS LITIGATION WHEN THEIR ONLY CONNECTION TO THE ALLEGED DISPUTE IS THAT THEY ARE TAXPAYERS AND RESIDENTS OF THE KENT INTERMEDIATE SCHOOL DISTRICT.

Few issues have created the level of controversy in the Michigan Supreme Court as the legal doctrine of standing. Nearly 10 years ago, the Michigan Supreme Court found a constitutional aspect to the standing doctrine and imposed a much more restrictive test for standing in *Lee* v *Macomb County Board of Commissioners*, 464 Mich 726 (2001). The Supreme Court further expounded upon the standing doctrine in *National Wildlife Federation* v *Cleveland Cliffs Iron Co*, 471 Mich 608 (2004). However, most recently in *Lansing Schools Education Association* v *Lansing Board of Education*, 487 Mich 389 (2010), the Supreme Court overruled its earlier precedents in *Lee* and *Cleveland Cliffs* and returned to a broader view of the standing doctrine.

Despite this controversy in the Michigan Supreme Court, Plaintiffs in the present case do not meet the standing requirement, even under the broader view of standing announced in *Lansing Schools Education Association*.

After specifically overruling *Lee* and *Cleveland Cliffs*, the Supreme Court majority in *Lansing Schools Education Association, supra*, announced its holding:

> We hold that Michigan standing jurisprudence should be restored to a limited, prudential doctrine that is consistent with Michigan's long-standing historical approach to standing. Under this approach, a litigant has standing whenever there is a legal cause of action. Further, whenever a litigant meets the requirements of MCR 2.605, it is sufficient to establish standing to seek a declaratory judgment. Where a cause of action is not provided at law, then a court should, in its discretion, determine whether a litigant has standing. A litigant may have standing in this context if the litigant 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.

[Footnotes omitted, 487 Mich at ___, *slip op at 8.*]

Thus, pursuant to *Lansing Schools Education Association, supra*, Plaintiffs must establish that it has standing in one of three ways: (1) there is an established legal cause of action for Plaintiffs' claim, (2) Plaintiffs meet the requirements for a declaratory judgment under MCR 2.605, or (3) Plaintiffs have a special injury, right, or substantial interest that will be detrimentally affected in a manner different from the citizenry at large. Plaintiffs in this case are unable to establish standing under any of these methods.

A. **There is no legal cause of action for Plaintiffs' claim.**

Plaintiffs have not alleged nor could they allege that there is any established statutory cause of action in the present case. In its jurisdictional allegation, Plaintiffs cite only to the general jurisdiction of a circuit court under section 605 of the Revised Judicature Act (MCL 600.605). Plaintiffs also reference section 15(3)(f) of the Public Employment Relations Act (MCL 423.215(3)(f)). However a review of that section of the Public Employment Relations Act fails to reflect any cause of action for taxpayers or citizens to challenge the terms of collective bargaining agreements between public employers and labor organizations representing public employees.

Furthermore, there is simply no established common law cause of action allowing individuals who are neither parties to a contract nor third-party beneficiaries of a contract to challenge the contents of a contract. Such a cause

of action would have significant consequences to the right of parties to enter into contracts, if the terms of those contracts may be challenged by outsiders to the contract.

**B. Plaintiffs do not have standing under the declaratory judgment court rule, MCR 2.605.**

Pursuant to *Lansing Schools Education Association, supra*, plaintiffs have standing if they meet the requirements for the issuance of a declaratory judgment under MCR 2.605. However, Plaintiffs do not meet the requirements of the court rule, because this action does not involve an "actual controversy," as required by the court rule. MCR 2.605(A)(1) states:

> In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted.

The purpose of the "actual controversy" requirement is to prevent a court from deciding hypothetical issues. Plaintiffs must "plead and prove facts which indicate an adverse interest necessitating the sharpening of the issues raised." *Shavers* v *Kelley*, 402 Mich 554, 589 (1978).

In general, a declaratory judgment may issue when it is necessary to guide a plaintiff's future rights. *Updegraff* v *Attorney General*, 298 Mich 48, 52 (1941) and *Welfare Employees Union* v *Civil Service Commission*, 28 Mich App 343, 350-351 (1970). "...[I]n some instances a declaratory judgment is appropriate even though actual injuries or losses have not yet occurred. But, in such cases, an actual controversy will be found to exist only where a declaratory judgment is necessary to guide a litigant's future conduct in order to preserve the

litigant's legal rights." *Fieger* v *Commissioner of Insurance*, 174 Mich App 467, 472 (1988).

In *Feiger*, *supra*, an attorney brought a lawsuit seeking a declaratory judgment regarding the constitutionality of certain amendments to the Revised Judicature Act involving medical malpractice claims. The Court of Appeals held that plaintiff could not assert the rights of his clients or others, but only his own rights in determining standing. The Court of Appeals further held that Feiger could not achieve standing by asserting that he would experience increased expenses in his legal practice relating to counseling clients and preparing affidavits required by the amendments. The Court of Appeals stated, "What is essential to an actual controversy is that plaintiff plead and prove facts which indicate an adverse interest necessitating a sharpening of the issues raised. The plaintiff must allege and prove an actual justiciable controversy." *Id* at 470 Moreover, "Filing charges and other expenses incurred in the initiation of litigation are not unique or uncommon. We hold that this alleged economic injury does not create a justiciable actual controversy." *Id* at 472

An example of the type of interest sufficient to create a justiciable controversy is found in *Lash* v *Traverse City*, 479 Mich 180 (2007). In that case, an unsuccessful applicant for employment alleged that he was not hired based upon his lack of residency, contrary to a state statute that prohibited making residency a condition of employment. The Michigan Supreme Court decided that there was an actual controversy that granted plaintiff standing to pursue a declaratory judgment action.

Plaintiffs' Complaint is bereft of any allegation for supporting that there is a justiciable actual controversy in this case. Plaintiffs allege only that they are taxpayers and residents of the Kent Intermediate School District. Thus, their interest in this case is no greater than that of any other taxpayer or resident. There is no allegation, let alone any factual support, for a claim of any specialized impact or harm upon these plaintiffs that is different or greater than any other member of the public. Moreover, there is no allegation or showing that a declaratory judgment is necessary to guide the future conduct of plaintiffs. Plaintiffs seek through their Complaint to accomplish what is expressly not permitted under MCR 2.605 – to obtain a ruling on a hypothetical question as to the legality of a provision of a collective bargaining agreement.

**C. Plaintiffs do not allege any special injury, right, or substantial interest that will be detrimentally affected in a manner different from the citizenry at large.**

The last manner under *Lansing* Schools *Education Association*, *supra*, that Plaintiffs may establish standing is to allege and prove special injury, special rights, or a substantial interest that will be detrimentally affected in a manner different from the citizenry at large. The allegations of Plaintiffs' Complaint reflect that they are unable to do so. Plaintiffs merely allege that they are taxpayers and residents of the Kent Intermediate School District. By definition, Plaintiffs are asserting only those interests and rights that belong to the citizenry at large, and not any special injury, rights, or interests that will be detrimentally affected.

Most recently, the Michigan Court of Appeals applied the *Lansing Schools Education Association* standing test in an unpublished decision in *Retired Detroit*

*Police and Fire Fighters Association Inc* v *Detroit Police Officers Association*, 2010 WL 5129841 (Docket No. 293998; December 16, 2010). (Decision attached.) The Court of Appeals decided that an association of retired police and firefighters did not have standing to bring an action challenging the decision of a retirement board to allow the City of Detroit a credit for three years in funding the retirement plan, because the retirees did not have any interest in the overfunding of the retirement plan. Even though the retirees had a greater interest in the action of the retirement board then the general public, because of its potential impact upon subsequent pension payments, the Court of Appeals did not find a sufficient interest to confer standing.

Consequently, there is no basis even under the broader view of standing pursuant to the holding of the Michigan Supreme Court in *Lansing Schools Education Association, supra*, to determine that Plaintiffs have standing in this case. This Court should grant Defendant Associations' Motion for Summary Disposition for lack of standing pursuant to MCR 2.116(C)(5).

## II. THIS COURT LACKS SUBJECT MATTER JURISDICTION OVER THIS CASE, BECAUSE THE MATTER IS WITHIN THE EXCLUSIVE JURISDICTION OF THE MICHIGAN EMPLOYMENT RELATIONS COMMISSION.

Paragraph 1 of Plaintiffs' Complaint alleges that a provision of Defendants' collective bargaining agreements violates section 15(3)(f) of the Public Employment Relations Act (PERA), MCL 423.215(3)(f). Section 15 of PERA establishes the mandatory topics of bargaining between a public employer and the labor organization representing its public employees and also identifies certain topics that may not be bargained. Section 10 of PERA, MCL 423.210,

imposes a legal obligation to bargain upon both the public employer and the labor organization representing public employees. The failure to meet this bargaining obligation constitutes an unfair labor practice, which may be committed by either a public employer or the labor organization representing public employees. Consequently, determining whether there is a violation of section 15(3)(f) of PERA necessarily determines whether these public employers and labor organizations violated their duty to bargain pursuant to section 10 of PERA.

With two narrow exceptions, the Michigan appellate courts have consistently held that the determination of unfair labor practice charges under PERA is within the exclusive jurisdiction of the Michigan Employment Relations Commission (MERC).

In *Rockwell* v *Board of Education of School District of Crestwood*, 393 Mich 616, 630 (1975), the Supreme Court stated, "MERC alone has jurisdiction and administrative expertise to entertain and reconcile competing allegations of unfair labor practices and misconduct under the PERA." The Supreme Court decided that as the dominant law regulating public employment relationships, even claims under other statutes, such as the Teacher Tenure Act, were not cognizable, because MERC has exclusive jurisdiction over unfair labor practices under PERA.

In *Lamphere Schools* v *Lamphere Federation of Teachers*, 400 Mich 104, 118-119 (1977), the Michigan Supreme Court held that even some common law

tort actions are barred by the exclusive jurisdiction of the MERC. The Court stated:

> If this Court permitted plaintiff School District to pursue any of the three civil tort actions pled (causing teachers to breach a duty, tortious interference with existing individual contractual relationships, civil conspiracy), such a result would necessarily circumvent the authority of MERC to determine charges of unfair labor practices. This becomes apparent since the defendant Federations, as representatives of the teachers, would inevitably defend proposed civil actions by alleging unfair labor practices. Then the determination of whether or not an unfair labor practice occurred would inexorably fall to the forum in which the tort action was brought the circuit court.

See also, *Ranta* v *Eaton Rapids Public Schools Board of Education*, 271 Mich App 261 (2006).

The same concern raised by the Michigan Supreme Court in *Lamphere Schools* exists in the present case. A determination whether there has been a violation of section 15(3)(f) of PERA necessarily involves the issue whether the public employer or labor organization have acted contrary to their bargaining obligations and, therefore, involves a potential unfair labor practice charge.

There are only two exceptions to the exclusive jurisdiction of MERC, neither of which apply to the instant case. First, section 16(h) of PERA, MCL 423.216(h), authorizes either MERC or any charging party to petition a circuit court for temporary relief or restraining order and the circuit court has jurisdiction to grant the temporary relief or restraining order. As the Court of Appeals pointed out in *Van Buren School District* v *Wayne County Circuit Judge*, 61 Mich App 6, 14 (1975):

> However, the circuit court has not here sought to exercise jurisdiction over the merits of the unfair labor practice charge. The

> circuit court did not purport to adjudicate the questions before MERC or oust MERC from jurisdiction to decide them. The preliminary injunction was sought in aid of MERC's jurisdiction, not in opposition to it.

[Footnote omitted.] The only other exception to MERC's exclusive jurisdiction involves actions brought by public employees who are members of the bargaining unit alleging a violation of the duty of fair representation by its labor organization. In *Demings* v *Ecorse*, 423 Mich 49 (1985), the Michigan Supreme Court decided that because an employee covered by the National Labor Relations Act may pursue a duty of fair representation action either before the National Labor Relations Board or in federal district court and PERA was modeled after the National Labor Relations Act, both circuit courts and MERC have concurrent jurisdiction over public employee claims of violations of the duty of fair representation.

Neither of these two exceptions is of assistance to Plaintiffs in the instant case. Plaintiffs are not seeking temporary relief in aid of MERC's jurisdiction, but instead are seeking a permanent injunction and final decision from this court. Also, of course, Plaintiffs are not public employees claiming a violation of the duty of fair representation against their labor organization.

Consequently, this Court is without subject matter jurisdiction of the dispute and Defendant Associations' Motion for Summary Disposition pursuant to MCR 2.116(C)(4) should be granted.

## III. PLAINTIFF'S COMPLAINT SHOULD BE DISMISSED BECAUSE IT WAS FILED BEYOND THE SIX-MONTH STATUTE OF LIMITATIONS.

Assuming *arguendo* that Plaintiffs have standing to bring this claim in circuit court, it must still be dismissed because the action was filed after the applicable statute of limitations. Section 16(a) of PERA, MCL 423.216(a), establishes a six-month statute of limitations for unfair labor practice charges. The same six-month statute of limitations has been applied to duty of fair representation cases that are brought in circuit court. See *Leider* v *Fitzgerald Education Association*, 167 Mich App 210 (1988) and *Silbert* v *Lakeview Education Association, Inc*, 187 Mich App 21 (1991).

The "Collaborative Settlement Agreement," which is the agreement that allegedly contains the illegal provision challenged in this case, is dated March 9, 2010 (Complaint, Exhibit F). However, the Complaint was not filed until December 16, 2010, well beyond the six-month statute of limitations.

Consequently, this Court should grant Defendant Associations' Motion for Summary Disposition pursuant to MCR 2.116(C)(7), because the Complaint was filed after the expiration of the applicable statute of limitations.

## RELIEF

WHEREFORE, for each and every one of the reasons set forth above, Defendant Associations respectfully request that this Honorable Court grant its Motion for Summary Disposition and award costs against Plaintiffs.

Respectfully submitted,

January 20, 2011

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2010 WL 5129841
Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

UNPUBLISHED
Court of Appeals of Michigan.

RETIRED DETROIT POLICE AND FIRE FIGHTERS ASSOCIATION INC.,
Plaintiff-Appellant,
v.
DETROIT POLICE OFFICERS ASSOCIATION, Detroit Police Lieutenants and Sergeants Association, Detroit Police Command Officers Association, Detroit Fire Fighters Association, The City of Detroit, and City of Detroit Police and Fire Retirement System, Defendant-Appellees.

No. 293998.Dec. 16, 2010.

Wayne Circuit Court; LC No. 08-116128-CL.

Before: WHITECK, P.J., and ZAHRA and FORT HOOD, JJ.

**Opinion**

PER CURIAM.

*1 Plaintiff, Retired Detroit Police and Fire Fighters Association Inc, appeals as of right an order dismissing its claims of breach of fiduciary duty, breach of contract, and conspiracy to cause breach of fiduciary duty, for lack of standing. We affirm.

## I. BASIC FACTS AND PROCEEDINGS

Plaintiff is an association representing the interests of approximately 6,500 retired police officers and fire fighters. Defendants, Police Officers Association (DPOA), Detroit Police Lieutenants And Sergeants Association (DPLSA), Detroit Police Command Officers Association (DPCOA) Association, Detroit Fire Fighters Association (DFFA) are labor unions (collectively, "the Unions") representing, respectively, Detroit police officers with a rank of "Police Officer," Detroit police officers with a rank of "Lieutenant, Sergeant or Investigator," Detroit police officers with a rank of "Inspector or Commander," and all Detroit fire fighters. Defendant city of Detroit Police and Fire Retirement System (Retirement System) provides retirement benefits for retired and deceased police officers and fire fighters and their beneficiaries. The Retirement System has a board of directors (Board) that is responsible for its operation, management and administration.

As stated in *Policemen and Firemen Retirement System v. City of Detroit,* 270 Mich.App 74, 75, 714 NW2d 658 Mich.App (2006), the Board,

is responsible for the general administration, management, and operation of the Policemen and Firemen Retirement System, which provides retirement and death benefits to active and retired uniformed city employees, their families, and beneficiaries.

* * *

Several Detroit officials and employees sit on the Board, including the mayor or his representative, a city council member, the city treasurer, the police chief, the fire commissioner, three firefighters, and three police officers.

* * *

Part of the Board's responsibilities is to ensure that the retirement system is properly funded. Accordingly, the Board, after consultation with an actuary, determines the amount of Detroit's annual pension contribution. The plan actuary calculates plan assets and liabilities to determine whether the plan is overfunded or underfunded. The annual contribution Detroit must make to the plan includes present service cost, plus a credit or additional payment depending on whether the plan is overfunded or underfunded.

On June 26, 2008, plaintiff filed a complaint against the DPOA, the DPLSA, the DPCO, the DFFA and defendant city of Detroit seeking superintending control of the Retirement System1 to reverse a resolution allowing the city of Detroit a $25 million annual credit toward its obligation to fund the Retirement System over the following three years, should the Retirement System remain overfunded. Plaintiff alleged that the Board was overfunded in fiscal year ending June 30, 2006 by over $100 million because of an unexpected return on investments. Plaintiff alleged that the Unions and the Retirement System breached their fiduciary duties to plaintiff when various members of the Unions seated on the Board approved the resolution in exchange for the city of Detroit amending the collective bargaining agreement to provide that active employees would be reimbursed for 100 percent of their accumulated sick leave upon their retirement instead of only 70 percent. On appeal, DPCOA

and DFFA freely admit that "[i]n 2008, the city again sought an offset to its contribution and offered benefit enhancements in order to encourage the allowance of these offsets." Joint Brief on Appeal, 8. DPCOA and DFFA maintain that the Unions had every reason to accept the city of Detroit's offer and no reason to reject it. Further, that the increase in final average compensation benefited the active union members and was in no way detrimental to the retired union members or the Retirement System. If the Retirement System became underfunded, the city of Detroit would have to increase its contribution to return it to fully funded status. The city of Detroit, on the other hand, simply maintains that defendants do not owe a fiduciary duty to plaintiff retirees in regard to negotiating collective bargaining agreements for active employees.

*2 Because plaintiff had requested superintending control, the case was assigned to the chief judge of the circuit court. The chief judge, in a letter to the parties' attorneys, questioned whether the instant case was properly an action for superintending control. The parties submitted briefs on the issue and the chief judge determined that the instant case was not a case for superintending control and transferred it to another judge (hereafter the trial court). There was no appeal of that decision.

After the case had been transferred, the trial court granted plaintiff's motion to amend the complaint to include claims for breach of contract and conspiracy to interfere with a contract. The trial court dismissed count 1 of plaintiff's amended complaint seeking superintending control, and no appeal of that decision was taken. The contract claim was based on an October 2004 "memorandum of understanding" signed by representatives of plaintiff, the Unions and the city of Detroit, that reflected the parties' agreement that the Board should distribute Retirement System overfunding to plaintiff's members and the Unions' members. The Retirement System was not a member to this memorandum of understanding. Plaintiff alleged that defendants breached this memorandum of understanding because in fiscal year ending June 30, 2006 the Retirement System was overfunded by over $100 million, and the Unions and city of Detroit did not seek to distribute the overfunding to the active and retired members of the Unions. Rather, plaintiff claims that the Unions influenced its members seated on the Board to allow the city of Detroit an offset over the next three years (unless the Retirement System should become underfunded) in exchange for an increase in the Unions' active members' benefits. Plaintiff also alleges this arrangement constituted a conspiracy to breach the memorandum of understanding and a conspiracy to breach the Board's fiduciary duty to all its beneficiaries.

DPOA and the city of Detroit filed motions for summary disposition to address plaintiff's additional claims. They argued that the memorandum of understanding had been superseded by an April 2001 "release and settlement agreement to distribute certain retirement systems assets" entered into by the parties. In response, plaintiff claimed that the release did not apply to the fiscal year in question. DPOA and the city of Detroit also argued that plaintiff lacked standing because plaintiff's members (1) had not suffered a concrete injury in fact and that plaintiff's claims were based on speculation because plaintiff's members have not been denied any benefit from the Retirement System; (2) the city of Detroit and the Unions were required to negotiate active members' benefits as a "a mandatory subject of bargaining;" (3) the Unions and the city owed no legal duty to plaintiff; and (4) plaintiff's members were not entitled to an increased benefit merely because active Union members received a benefit. The remaining defendants subsequently filed motions for summary disposition essentially raising the same arguments. After a hearing, the trial court dismissed plaintiff's remaining claims because plaintiff failed to show that its members had been harmed because they had not been denied any benefit from the Retirement System, and therefore lacked standing.

## II. STANDING

### A. STANDARD OF REVIEW

*3 Whether a party has standing is a question of law, which this Court reviews de novo. *Michigan Citizens for Water Conservation v. Nestle Waters North America, Inc.*, 479 Mich. 280, 291; 737 NW2d 447 (2007).

### B. ANAYLSIS

Plaintiff argues that the trial court erred in determining that plaintiff lacked standing. Because plaintiff has no substantial legal interest in the overfunding of the Retirement System, we conclude that plaintiff lacked standing to bring the instant claims.

In *Lansing Sch. Ed. Ass'n v. Lansing Bd. of Ed.*, --- Mich. ----; NW2d ---- (Docket No. 138401, decided July 31, 2010), the Michigan Supreme Court recently overruled *Lee v. Macomb Co. Bd. of Comm'rs*, 464 Mich. 726; 629 NW2d 900 (2001), under which, the "irreducible constitutional minimum" of standing contained three elements. Those elements were: (1) an invasion of a legally protected interest that is concrete and

particularized and actual or imminent, not conjectural or hypothetical, (2) a causal connection between the injury and the conduct complained of such that the injury is fairly traceable to the conduct, and (3) likelihood and not merely speculation that the injury will be redressed by a favorable decision.

The *Lansing Sch Ed Ass'n* Court stated that, "Michigan standing jurisprudence should be restored to a limited, prudential approach that is consistent with Michigan's long-standing historical approach to standing." Slip op at 2. The *Lansing Sch Ed Ass'n* Court held that,

> a litigant has standing whenever there is a legal cause of action. Further, whenever a litigant meets the requirements of MCR 2 .605, it is sufficient to establish standing to seek a declaratory judgment. Where a cause of action is not provided at law, then a court should, in its discretion, determine whether a litigant has standing. A litigant may have standing in this context if the litigant 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.

Here, we conclude plaintiff did not establish a legal cause of action because plaintiff has no right to receive any overfunding from the Retirement System. MCL 38.1140m expressly provides that, "[i]n a plan year, any current service cost payment *may* be offset by a credit for amortization of accrued assets, if any, in excess of actuarial accrued liability." The word "may" designates discretion. *American Federation of State, County and Mun. Employees, AFL-CIO Michigan Council 25,* 214 Mich.App 182, 542 NW2d 333 (1995). Thus, the decision to grant an offset to the employer if there is overfunding rests with the Board. Plaintiff cannot claim a right to the overfunding. Rather, plaintiff only has a right to receive the benefits due to its members. Plaintiff also maintains that the memorandum of understanding "was a binding contract between [p]laintiff, the Unions and the City [of Detroit]." However, the memorandum of understanding plainly states that "the parties believe that the Policemen and Firemen Retirement System is required to abide by the terms of the [m]emorandum of [u]nderstanding pursuant to applicable law *however the parties recognize the independence of the trust fund/Retirement System as a separate entity with fiduciary obligations.*" (Emphasis Added). The memorandum of understanding merely states the parties' aspirations in regard to whether the Board will distribute overfunding, if any, to all members of the Unions. Accordingly, plaintiff cannot establish a breach of contract on the basis of the memorandum of understanding.

**4* Further, we cannot conclude that plaintiff "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." *Lansing Sch Ed Ass'n,* at slip op 22. There is no dispute that the statutory scheme does not provide plaintiff the right to challenge a decision in regard to the distribution of overfunding in the Retirement System. In this respect, the circumstances are akin to *Policemen and Firemen Retirement System,* 270 Mich.App 74. In that case, the Retirement System was underfunded and the city of Detroit attempted to enforce a city ordinance to extend the amortization period to 20 years, contrary to the Board's decision to adopt a 14-year amortization period. This Court held that the "the statutory language is unequivocal that the Board determines the amount the employer (Detroit) contributes annually to the retirement system and that the employer, in turn, is "required" to make the contribution." *Id.*, at 80-81. Further, that "[t]he Board's determination also necessarily includes the amount of time in which Detroit must pay the unfunded accrued pension liabilities because the period directly affects the amount Detroit must contribute to the plan each year." *Id.,* at 81. Similarly, here, the Board determines the amount that the city of Detroit contributes (and conversely does not contribute) annually to the Retirement System. Given that the city of Detroit cannot challenge the Board's determination in regard to the amortization period during a period of underfunding, it follows that plaintiff has no legal basis to challenge an offset granted during a period of overfunding.

Further, plaintiff fails to establish that its members have a special injury or right, or substantial interest that will be detrimentally affected by the Board's decision to grant the city of Detroit an offset because the Retirement System was overfunded. Plaintiff alleges that "[p]laintiff's members suffered an injury in fact because the Defendants' actions reduced the security of the plan without providing a compensating benefit for the reduced security," Plaintiff's concerns are misplaced, however, given that "Const 1963, art 9, § 24 provides that "[t]he accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereby." Stated differently, plaintiff's action to recover any benefits owed lies in a contract against the city of Detroit. Plaintiff simply does not have an action against defendants.

Moreover, should any reduction of any benefit be realized, plaintiff has an action against the city of Detroit

to recover any loss of benefit. Thus, although plaintiff may have standing to adjudicate an eventual claim in the event that its members are denied benefits, plaintiff's claim here is simply not ripe for adjudication. The requirement of ripeness precludes the adjudication of hypothetical or contingent claims. An action is not ripe if it rests on contingent future events. See *Hendee Putnam Tp,* 486 Mich. 556, 786 NW2d 521 (2010). Because plaintiff lacks standing to assert a cognizable legal claim, and otherwise has not stated a justiciable claim, we affirm the trial court's decision dismissing plaintiff's action.

Footnotes

1 Plaintiff did not name the Retirement System in the complaint, but the Retirement System later intervened.

End of Document

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

CHRIS JURRIANS, GAIL SCHUILING, LILA DELINE, RINA SALA-BAKER, and TOM NORTON,

Plaintiffs,

v

KENT INTERMEDIATE SCHOOL DISTRICT et al.,

Defendants.

CASE NO. 10-12758-CL

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**NOTICE OF HEARING**

PLEASE TAKE NOTICE that the Motion for Summary Disposition filed by Defendant Associations will be heard along with Defendants Schools' Motion for Summary Disposition on the 18th day of February, 2011, commencing at 9:00 in the forenoon or as soon thereafter as counsel may be heard.

Respectfully submitted,

January 20, 2011

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STATE OF MICHIGAN
IN THE COUNTY OF KENT
17TH CIRCUIT COURT

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CHRIS JURRIANS et al.,

Plaintiffs,

-and-

KENT INTERMEDIATE SCHOOL DISTRICT et al.,

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**CERTIFICATE OF SERVICE**

I, Debra Dawsey, hereby certify that on January 20, 2011, I served a copy of the Motion for Summary Disposition of Defendant Associations, Brief of Defendant Associations in Support of Their Motion for Summary Disposition, and Notice of Hearing for the above-entitled matter, by first-class mail, postage properly affixed, to Patrick J. Wright and Craig A. Mutch by placing same in the United States mail at East Lansing, Michigan.

Debra Dawsey