STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

REGENTS OF THE UNIVERSITY OF MICHIGAN

Respondent, Case No.: R11 D-034

and

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

Petitioner.

Patrick J. Wright (P54052)
Attorney for Intervener Melinda Day
Mackinac Center Legal Foundation
140 West Main Street
Midland, Michigan 48640
(989) 631-0900

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

PETITIONER'S MOTION TO DENY MOTION TO INTERVENE AND FOR SUMMARY DISPOSITION

MARK H. COUSENS
ATTORNEY

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

Introduction

The Commission should promptly and decisively dismiss the filing by this individual as it is not permitted by any reading of PERA or the Commission's rules. The submission was not submitted in a good faith effort to have the Commission consider the arguments presented. Rather it is a polemic intended to rally the individual's few followers. Any doubt about the malicious nature of this action should be resolved when one notes that the arguments fail to assert or even acknowledge the Commission's rules with respect to an intervenor's obligation to present a showing of interest.

This action is not simply regrettable. It is an exercise in political theater rather than legal judgment. The motion should be denied.

The Facts

A. The Petitioner

The Graduate Employees Organization, AFT MI, AFT, AFL-CIO is a labor organization. It is the bargaining agent for a large unit of professionals employed by the University of Michigan. The Union has served as a bargaining agent for employees of the University of Michigan for nearly four decades.

GEO filed a petition with the Commission seeking to accrete to its unit a group of other employees of the University. No other labor organization has sought to intervene. After deliberation, the governing body of the University agreed that the petition was appropriately filed with regard to a cadre of public employees; no objection to the filing has been submitted by the public employer. The petition is being processed now and the parties are in the process

MARK H. COUSENS
ATTORNEY
26261 EVERGREEN ROAD
SUITE 110
SOUTHFIELD, MICHIGAN 48076
PHONE (248) 355-2150
FAX (248) 355-2170

of negotiating a consent election agreement. It is anticipated that a consent will be achieved in the very near future.

B. This Filing

The document submitted to the Commission is titled a "motion to intervene" but there is no proceeding into which Ms. Day may intervene. The filing party is an individual. She does not pretend to be a labor organization. And this filing is not supported by another employee much less 10% of the proposed bargaining unit. Instead, the submission is proffered by an anti-union activist who may or may not be a potential member of the bargaining unit. (Indeed, no document is presented which supports the status of Ms. Day. The Commission has not been informed whether she is eligible to vote in the election or not.)

Argument

A. The Individual Lacks Standing to Participate

1.

The document submitted, while titled a "motion to intervene" is not an intervention of the type permitted by the rule cited by Ms. Day. She relies on 423.145(3). That rule states, in pertinent part:

> "An employee, group of employees, individual, or labor organization which makes a showing of interest not less than 10% of the employees within the unit claimed to be appropriate may intervene in the proceedings and attend and participate in all conferences and any hearing that may be held."

The rule does not permit an individual, without support, to participate in the proceeding. *An individual may request to intervene only if the request is supported by at least 10% of the proposed bargaining unit and that person represents those persons.* This document is, on its

MARK H. COUSENS
ATTORNEY
26261 EVERGREEN ROAD
SUITE 110
SOUTHFIELD, MICHIGAN 48076
PHONE (248) 355-2150
FAX (248) 355-2170

face, submitted by one person. Hence, Ms. Day does not qualify as an intervener under the very rule she cites.

2.

Individuals lack standing to participate as individuals in any representation matter. Neither the Act nor rules contemplate a single person as a "party." Rather, individuals may join together and, if they represent at least 10% of the proposed unit, may be heard regarding terms of the consent. But nothing permits one person to try to derail an election.

PERA contemplates collective, not individual action. The statute allows for individuals to act but only as representatives of a greater group. MCL 423.212 (a) states in pertinent part:

> "When a petition is filed, in accordance with rules promulgated by the commission: (a) By a public employee or group of public employees, or an individual or labor organization acting in their behalf, alleging that 30% or more of the public employees within a unit claimed to be appropriate for such purpose wish to be represented for collective bargaining..."

The statute is intended to permit collective action with respect to wages, hours and working conditions. It is not intended to authorize one person to act on behalf of a cadre of others unless appropriate support is shown. Here, Ms. Day, acting on her own, is seeking to upset the wishes of at least 30% of her colleagues. No one person has that right.

3.

Even if her filing was supported by a 10% showing of interest, Ms. Day could not seek to have the petition dismissed. The role of an intervener is quite limited. They may attend conferences and present evidence at a hearing. However, the rule does not contemplate an intervener seeking dismissal of a properly supported petition. An intervener may become a "party" only if their intervention is supported by at least 30% of the proposed unit. Only then may that party seek dismissal of a petition.

MARK H. COUSENS
ATTORNEY

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

4.

If approved, the action taken by Ms. Day would wreak havoc on the representation process. (Indeed, that may be her goal). It would permit one person to claim that the unit is improperly configured; that the petition is somehow defective. An individual might claim that a consent election agreement is improper and try to force a hearing on the RC petition. That would damage, beyond measure, the right of employees to participate in an election. It would allow for nearly indefinite delay of a representation proceeding.

Consider what Day is advocating here: she claims that she, alone, may force a full evidentiary hearing on the status of certain employees. That would come despite an agreement between the two actual parties to the petition with respect to the status of persons in the bargaining unit. It is likely that she, and her counsel, know better.

B. The Motion is Not Recognized

Even if Ms. Day had standing, a motion for summary disposition is not recognized by Commission rules or the Act in a representation proceeding. The Commission's rules presently recognize six motions; one is for summary disposition. However, that motion may only be filed in the context of a unfair labor practice charge case.

R423.161 (1) states, in part "An application to the commission for an order other than that *sought for by the unfair labor practice charge* shall be by motion." R 423.165(1) states that "The commission or administrative law judge designated by the commission may, on its own motion or on a motion by any party, order *dismissal of a charge* or issue a ruling in favor of the *charging party.*

MARK H. COUSENS
ATTORNEY

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

Some rules apply to all proceedings, despite the apparent conflict with R423.161(1). So, a party might move to reopen the record per R423.166. A party may request reconsideration per R423.167. But these rules are explicit; they refer to a party to "a proceeding."

The summary disposition rule, by its terms, applies to unfair labor practice proceedings, only. The motion filed here is outside the rules.

C. The Motion is Filed in Bad Faith

The motion filed by Ms. Day was submitted in bad faith. The Commission should so find.

The Mackinac Center is notorious for its anti-union sentiment and advocacy. Its political views are well known; they are broadcast through its web site and press releases. See http://www.mackinac.org/15467. Consistent with its goals, the Center held a press conference to advertise this filing. It went to great lengths to publicize it including appearances on right-wing radio. Its web site includes a "donate" link on the same page as cited. *Id.*

This submission had to be understood as meritless. Other than arguing a position that neither party advocates, the Mackinac Center and its adherent Day fail to explain in any manner just what gives them the right to be part of this proceeding. It is utterly and completely interference neither recognized by the law or undertaken in good faith.

MARK H. COUSENS
ATTORNEY

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

Conclusion

The Commission should reject consideration of the submission here.

MARK H. COUSENS (P12273)

August 2, 2011

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon Patrick J. Wright at the address of Mackinac Center Legal Foundation, 140 West Main Street, Midland, Michigan 48640 on August 2, 2011 by: ✓ UPS Overnight Carrier.

Jill M. Lowing

MARK H. COUSENS
ATTORNEY

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