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November 3, 2011

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Edward D. Callaghan, Chair
Department of Labor & Economic Growth
Employment Relations Commission
Cadillac Place, Suite 2-750
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[redacted]

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Re: Regents of the University of Michigan -and-
Graduate Employees Organization, AFT, AFL-CIO

Case No. R11 D-034

Dear Chairman Callahan:

The Commission should again summarily reject the officious motion submitted by the Mackinac Center because it is deficient, untimely and unsupported. The document does not come close to meeting the requirements of the Commission's rules. It should be dismissed and the Mackinac Center warned about further meritless filings.

Background Facts

A.

On October 3, 2011 the Petitioner submitted a motion under R423.167 requesting reconsideration of the Commission's September 14, 2011 decision. Pursuant to R423.161(3) a response was due from the Employer by October 17, 2011. The University of Michigan submitted a timely response (that did not oppose the Petitioner's motion).

On September 14, 2011 the Commission dismissed a motion by one Melinda Day to intervene in this proceeding. The Commission properly concluded that Day was not entitled to intervene as she presented no showing of interest. Despite this clear direction, on November 2, 2011, the Mackinac Center, acting under the *nom de plume* of "Students Against GSRA Unionization," submitted yet another motion. This claims to be supported by 371 graduate students.

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The Mackinac Center does not explain that it has presented the Commission with any evidence of showing of interest. Correspondence accompanying the motion does not indicate that either cards or a petition bearing original signatures were submitted with the document.

B.

The Mackinac Center is attempting to intervene as a 10% intervener. The Petitioner and the Employer executed a consent election agreement on August 3, 2011. An intervention, then, is untimely even if it were supported.

Argument

A.

This effort to intervene has to be supported by an actual, tangible, showing of interest. The Mackinac Center claims to have the support of 371 persons. That contention has to be evidenced by a writing, signed and dated by each person claiming to support the intervention. There is no evidence that any showing of interest was filed. Absent such a tangible showing, the motion should be rejected because it fails to meet the requirements of R43.145.

B.

The request to intervene is untimely. R423.145 (3) requires that a 10% request to intervene–supported by tangible showing of interest–must be submitted not later than 48 hours following the execution of a consent election agreement. This request is months late.

The rule is intended to prevent an intervener from holding the election process hostage by submitting a request to intervene after an election is scheduled. Here, a consent was signed on August 3, 2011. As such, any intervention was due on August 5, 2011. This request is untimely.

C.

A 10% intervener is not permitted to interfere with the election process. The intervener is not permitted to force a hearing on a petition nor is their signature required on a consent election agreement. Rather, the intervener is permitted to "...participate in all conferences and any hearing that may be held." R 423.145(3).

Here, a purported intervener is attempting to exercise rights which it would not have even if the intervention were supported and was timely. The Mackinac Center cannot climb into an election process for the sole purpose of preventing an election. There is a significant difference between the rights of a 10% intervener and those of a 30% intervener. Only a petitioner, or someone with the rights of a petitioner (i.e. an entity with 30% showing) may seek to withhold consent or have a petition dismissed. A 10% intervener does not have such authority.

If granted here, this entity, dedicated to the extinction of the labor movement, could attempt to delay or interfere with any public sector election on the mere gathering of a few cards. That does not comport with the very purposes of the Act. The Commission should not tolerate this effort to functionally handicap the election process.

The Mackinac Center is without authority to be heard here.

D.

This filing is untimely even if it were supported and if the Mackinac Center had the right to be heard. The Petitioner's motion was filed on October 3; the reply was due October 17. R423.161(3). Any statement by the Mackinac Center was due then. This filing is outside the due dates set by the rules.

E.

The Mackinac Center persists in claiming that Melinda Day is an intervener; her name appears on their caption. Day's request was rejected on September 14, 2011. It is entirely improper to maintain her name on pleadings.

Conclusion

This filing should be summarily rejected. The Mackinac Center should be notified that further efforts to participate in this proceeding without compliance with rules will result in the award of attorney fees to the Petitioner.

Very truly yours,

Mark H. Cousens

/jml

cc: Ruthanne Okun
Christine Gerdes
Patrick Wright