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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REPLY BRIEF OF DEFENDANT ASSOCIATIONS

ARGUMENT

I. PLAINTIFFS HAVE NOT ESTABLISHED STANDING TO PURSUE THIS LITIGATION.

In their Brief in Response to Defendants' Motions to Dismiss, Plaintiffs have essentially conceded, by failing to respond to the arguments made by Defendant Associations, that Plaintiffs cannot establish standing under two of the methods announced in *Lansing Schools Education Association* v *Lansing Board of Education*, 487 Mich 349 (2010), either by showing that they meet the requirements of MCR 2.605 or by showing a special injury or right that will be detrimentally affected in a manner different from the citizenry at large. Instead, Plaintiffs assert they meet the standing test of *Lansing Schools Education Association*, because: (1) there is a legal cause of action under MCL 600.2041 and (2) section 15 of the Public Employment Relations Act, MCL 423. 215, implies that the Legislature intended to confer standing on these Plaintiffs.

A. Plaintiffs do not meet the requirements for a taxpayer lawsuit pursuant to MCL 600.2041.

Since nowhere in their Complaint did Plaintiffs allege that they were bringing this matter under MCL 600.2041, Defendant Associations did not address this claim in their initial brief. However, even a cursory review of the requirements for a so-called "taxpayer lawsuit," as asserted by Plaintiffs under MCL 600.2041(3), reflects that an essential requirement is not present in the instant case.

Plaintiffs acknowledge at page 6 of their Brief that in order for this case to meet the requirements of MCL 600.2041(3), there must be a showing that the alleged unlawful contract provision involves an illegal expenditure of state funds. Furthermore, Plaintiffs admit at page 7 of their Brief, "Plaintiffs are *not* contending that Defendant

schools have a duty to privatize...." [Emphasis in original.] Thus, Plaintiffs are in the unenviable position of having to establish that language in a collaborative agreement that acknowledges that Defendant School Districts are not going to privatize services covered by the agreement involves the illegal expenditure of funds when Plaintiffs agree that there is no duty to privatize. Moreover, even if the no-privatization clause were removed, there is no basis to conclude that Defendant School Districts would spend any less money providing those services.

Plaintiffs only basis for asserting that they meet the expenditure of public funds requirement is to claim that the fact situation in the present case is analogous to the claim in *House Speaker* v *Governor*, 443 Mich 560 (1993). In *House Speaker*, there was a claim that the Governor had no authority to restructure the Department of Natural Resources. The Michigan Supreme Court concluded that assuming that the Governor did not have the authority to create the "new" department, any monies spent by the agency would be done illegally. Plaintiffs state at page 7 of their Brief:

> Just as in *House Speaker*, where the improper formation of a state agency would result in illegal expenditures of state funds by that agency, the improper formation of the Collaborative Settlement Agreement leads to a collective bargaining contract that necessarily involves the illegal expenditure of state funds on school employee services.

Plaintiffs' argument is simply a *non sequitur*. While expenditures made by an unlawful state agency would of necessity be illegal expenditures, expenditures made by a lawfully established school district to its employees for services rendered are not illegal expenditures when there is nothing unlawful about utilizing employees to perform those services.

B. Plaintiffs are unable to identify any provision in section 15 of the Public Employment Relations Act that grants taxpayers the right to bring a lawsuit

against a public school employer and labor organization for allegedly bargaining over unlawful topics of bargaining.

Plaintiffs devote a substantial portion of their Brief to a discussion regarding bargaining subjects under the National Labor Relations Act, the adoption of the Public Employment Relations Act (PERA) in Michigan, appellate court decisions on subcontracting in the public sector, and the enactment of amendments to the PERA in 1994 by Public Act 112. While the historical discussion is interesting, if not complete, objective, and relevant; of much greater import to this case is the fact that Plaintiffs are unable to cite to a single occasion since the passage of PA 112 in 1994 or even since the enactment of the PERA in 1965, where a Michigan court has upheld a taxpayer lawsuit challenging one or more provisions in a collective bargaining agreement bargained pursuant to section 15 of the PERA.

Sections 10, 15, and 16 of the PERA must be read *in pari materia*. Section 15 establishes and defines the duty to bargain by a public employer and labor organization. Section 10 identifies unfair labor practices that may be committed by public employers and labor organizations, including the refusal to bargain in good faith. Section 16 establishes the procedures for the determination of unfair labor practices by the Michigan Employment Relations Commission (MERC). There is simply no fair reading of section 15 of the PERA that authorizes taxpayers to bring lawsuits for alleged unlawful provisions in collective bargaining agreements.

II. PLAINTIFFS HAVE NOT REBUTTED THE ARGUMENTS OF DEFENDANTS THAT THIS COURT IS WITHOUT SUBJECT MATTER JURISDICTION AND THAT THE CLAIM WAS FILED BEYOND THE APPLICABLE STATUTE OF LIMITATIONS.

After an exhaustive discussion of labor law history, Plaintiffs surprisingly give short shrift to the arguments of Defendants that this court lacks subject matter jurisdiction and that the claim was brought beyond the applicable statute of limitations. The argument that Plaintiffs do make, found at pages 19-20 of their Brief, includes an important factual error. Plaintiffs assert at page 19 of their Brief, "MCL 423.215 was implemented after both MCL 423.210 and MCL 423.216...." In fact, section 15 of PERA was passed as part of the original enactment of the PERA in 1965. Thereafter, section 15, along with several other sections of the PERA, was amended by PA 112 in 1993. See 1994 Mich Legis Serv PA 112 (H.B. 5128). As discussed above, section 15, along with sections 10 and 16, were part of a comprehensive scheme in which the Legislature established the duty to bargain; created unfair labor practices for violating certain responsibilities, including the duty to bargain; and established a procedure through the MERC for adjudication and enforcement of those violations. While the specific listing of prohibited topics of bargaining were part of PA 112, it is noteworthy that the Legislature amended existing section 15 and did not create a separate procedure for handling alleged violations of the prohibited topics of bargaining. Contrast that with another amendment made by PA 112 that created an additional remedy for unlawful strikes and lockouts in which the Legislature set forth a new procedure for the adjudication and enforcement of that remedy, MCL 423.202a.

Defendant Associations' reliance upon *Lamphere Schools* v *Lamphere Federation of Teachers*, 400 Mich 104 (1977) is unchallenged by Plaintiffs, other than their mistaken reliance upon section 15 being implemented after sections 10 and 16 of PERA. The Michigan Supreme Court found in that case that traditional tort claims could

not be brought in a circuit court, because they would involve potential unfair labor practice charges. Similarly, in the present case, Plaintiffs' claims specifically involve potential unfair labor practice charges.

Plaintiffs also do not specifically address the applicability of the six-month statute of limitations for unfair labor practices under the PERA. Instead, they claim that the statute of limitations for a breach of contract applies to this case. Defendant Associations in their original brief established that the six-month statute of limitations has been applied to other PERA claims. Plaintiffs give no reason for utilizing the breach of contract statute of limitations, when there is no claim of a breach of contract in the present Complaint.

CONCLUSION

For the reasons set forth in Defendant Associations' Motion and Brief in Support of Summary Disposition and those set forth herein, Defendant Associations request the court to grant the relief set forth in their Motion for Summary Disposition.

Respectfully submitted,

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