



THE UNIVERSITY OF MICHIGAN
OFFICE OF THE VICE PRESIDENT
AND GENERAL COUNSEL

December 9, 2011

Via Electronic Mail and USPS

Michigan Employment Relations Commission
Cadillac Place
3026 W. Grand Blvd.
Suite 2-750
Detroit, MI 48202-2988

RE: University of Michigan and Graduate Employees Organization/AFT-MI, AFT, AFL-CIO
MERC Case No: R11 D-034

Dear MERC Representatives,

Enclosed please find the University of Michigan's Brief Opposing Intervention by the Attorney General and Proof of Service in the above referenced case.

Sincerely,

Christine M. Gerdes
Associate General Counsel

Enclosure

CC: Mark Cousens, Attorney for GEO, AFT MI, AFT, AFL-CIO
Patrick Wright, Attorney for Intervenor Students Against GSRA Unionization
Dan Artaev, Attorney for Intervenor Attorney General Bill Schuette

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STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

UNIVERSITY OF MICHIGAN,
Public Employer,

-and-

Case No. R11 D-034

GRADUATE EMPLOYEES ORGANIZATION/AFT MI, AFT, AFL-CIO
Petitioner-Labor Organization,

-and-

STUDENTS AGAINST GSRA UNIONIZATION,
Intervenor,

-and-

BILL SCHUETTE, ATTORNEY GENERAL,
Intervenor.

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**PUBLIC EMPLOYER UNIVERSITY OF MICHIGAN’S BRIEF OPPOSING INTERVENTION BY THE
ATTORNEY GENERAL**

A. Introduction

The Public Employer University of Michigan (hereinafter “University”) opposes the intervention of the Attorney General into the instant representation proceeding because such intervention is inconsistent with the University’s constitutional autonomy under Mich. Const. 1963 Art. VIII, § 5.

B. Procedural History

On April 27, 2011, the Graduate Employees Organization, AFT MI, AFT, AFL-CIO (hereinafter “Union) filed a Petition for Representation Proceedings seeking an election to become certified as the exclusive representative of graduate student research assistants (GSRAs) under the Public Employment Relations Act (“PERA”), MCL 423.201 *et seq.* On September 14, 2011, the Michigan Employment Relations Commission (hereinafter the “Commission”) issued its Decision and Order dismissing the Union’s petition. On October 3, 2011, the Union filed a Motion for Reconsideration. The University filed a Response to Petitioner’s Motion for Reconsideration on October 17, 2011. On November 1, 2011, Students Against GSRA Unionization (hereinafter “SAGU”) filed a Motion to Intervene and to Deny

Petitioner's Motion for Reconsideration. On November 3, 2011, the Union filed a response to SAGU's Motion to Intervene and Deny Petitioner's Motion for Reconsideration. On November 4, 2011, the University filed a Supplemental Response of Public Employer University of Michigan. At its regularly scheduled meeting on November 8, 2011, the Commission discussed, but did not act on, the Union's Motion for Reconsideration and SAGU's Motion to Intervene. On November 30, 2011, Attorney General Bill Schuette filed a Motion to Intervene. On December 5, 2011, the Union filed a Brief Opposing [the Attorney General's] Motion to Intervene. On December 6, 2011, SAGU filed a Brief in Response to Attorney General's Motion to Intervene. On December 7, 2011, the Attorney General filed a Reply to GEO's Brief Opposing Motion to Intervene.

C. Intervention by the Attorney General Violates the Michigan Constitution

The Board of Regents of the University of Michigan derives its authority directly from the Michigan Constitution. Article VIII, Section 5 provides:

The regents of the University of Michigan and their successors in office shall constitute a body corporate known as the Regents of the University of Michigan; [The] board shall have general supervision of its institution and the control and direction of all expenditures from the institution's funds. [The] board shall, as often as necessary, elect a president of the institution under its supervision. He shall be the principal executive officer of the institution, be ex-officio a member of the board without the right to vote and preside at meetings of the board. The board... shall consist of eight members who shall hold office for terms of eight years and who shall be elected as provided by law. The governor shall fill board vacancies by appointment. Each appointee shall hold office until a successor has been nominated and elected as provided by law.

Mich. Const. 1963 Art. VIII, § 5.

The University's Board of Regents is constitutionally charged with, and solely responsible for, the "general supervision" of the University. The constitution protects the right of the Regents to make decisions regarding the University's operations.

Under this provision and relevant case law, the Board of Regents has the authority to make and implement judgments about the mission of the University and how to further the mission, even if the Board's judgment differs from the opinions of some of the University's executives, faculty, staff, or students, and even if such decision is unpopular in some quarters. Here, the Attorney General seeks to advocate for those from within the University who would have made a judgment different from the judgment made by the Regents about the merits and risks of allowing a representation election in this case. Therefore, the Attorney General's Motion to Intervene unconstitutionally seeks to interfere with the Regents' "absolute management of the University..." *Federated Publications, Inc v Bd of Trustees of Mich State Univ*, 460 Mich 75, 87; 594 NW2d 491 (1999) (quoting *State Bd of Agriculture v Auditor General*, 226 Mich 417, 424; 197 NW 160 (1924)).

The University can, and will, represent its interests effectively as it has done consistently over its long and storied history.

D. Conclusion

For these reasons, the University opposes the Attorney General's Motion to Intervene.

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