



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN EMPLOYMENT RELATIONS COMMISSION  
BUREAU OF EMPLOYMENT RELATIONS  
RUTHANNE OKUN  
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DIRECTOR

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Re: Local Request  
Regents of U of M, R11 D-034  
(first batch)



**ORIGINAL**

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

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**RESPONSE TO PETITIONER'S MOTION FOR RECONSIDERATION**

A. Introduction

The Respondent University of Michigan (hereinafter "University") offers the following response to the Motion for Reconsideration and Brief In Support of Motion for Reconsideration (hereinafter, "2011 Brief In Support") filed by the Graduate Employees Organization, AFT-MI, AFT, AFL-CIO (hereinafter "Union") in the above-captioned matter.

B. Procedural History

On April 27, 2011, the 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 Commission issued its Decision and Order dismissing the Union's petition. Thereafter, the Union filed a Motion for Reconsideration.

On May 19, 2011, the Regents of the University of Michigan voted 6-2 to pass the following resolution:

Resolved, that consistent with the University of Michigan's proud history of strong, positive, and mutually productive labor relations, the Board of Regents supports the rights of University Graduate Student Research Assistants, whom we recognize as employees, to determine for themselves whether they choose to organize.

The Union and the University then worked toward a consent election agreement which was submitted to the Commission for approval on August 4, 2011. The parties' agreement was predicated on their belief that any election and certification would be under PERA, and as noted in Item #10 of the proposed Consent Election Agreement, "The University and GEO specifically agree that the terms outlined in this Consent Election Agreement are each dependent upon one another. If MERC rejects any of the terms as set forth above, MERC will be deemed to have rejected the entire agreement, and the parties will reconvene to negotiate a new agreement."

In *Regents of the University of Michigan*, 1981 MERC Lab Op 777 (hereinafter, the "1981 Decision"), the Commission adopted Administrative Law Judge Sperka's Supplemental Decision and Recommended Order, holding that GSRAs are not "employees" under PERA. In dismissing the current representation petition, the Commission addressed the jurisdictional issue raised by the Union's petition. Having already determined that GSRAs are not "employees" under PERA,

the Commission held that "absent a showing of a substantial and material change of circumstance," It was bound by its previous decision.

C. 1981 Decision Concluded that GSRAS at the University are not Employees Under PERA

As the Commission summarized in its September 14, 2011, Decision and Order, the 1981 Decision "reviewed the nature of the employment of each of the three types of graduate student assistants... [and] concluded that the TAs and SAs were employees under PERA, but the RAs were not."<sup>1</sup> (p. 3). In 1981, the Commission held:

The nature of RA work is determined by the research grant secured because of the interests of particular faculty members and/or by the student's own academic interest. They are individually recruited and/or apply for the RA position because of their interest in the nature of the work under the particular grant. Unlike the TA's who are subject to regular control over the details of their work performance, RA's are not subject to detailed day-to-day control. RA's are frequently evaluated on their research by their academic advisors and their progress in their appointments is equivalent to their academic progress. Nor does the research product they provide further the University's goal of producing research in the direct manner that the TA's and SA's fulfill by their services. Although the value of the RA's research to the University is real it is clearly also more indirect than that of teaching 30% of the undergraduate courses. RA's...are working for themselves. 1981 MERC Lab Op at 785-786.

Administrative Law Judge Sperka's Supplemental Decision and Recommended Order contained a thorough review of the facts and circumstances presented during the hearings and the evidence that supported the Commission's legal conclusion that GSRAs are not employees under PERA. Despite the existence of indicia of employment for other purposes, the Commission held that the nature of the work performed by GSRAs was determinative with respect to their status under PERA. The following sections report on the current status of research and GSRAs at the University.

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<sup>1</sup> The term "RA" and "GSRAs" are used interchangeably in this document.

D. The GSRA Relationship – 1981<sup>2</sup> and 2011

The 1981 ruling that GSRA's are not employees under PERA rested heavily on the evidence presented by the parties of the nature of GSRA work and its relationship to the graduate student's academic pursuits.

1. The Board of Regents' May, 2011 Resolution

Shortly after the Union filed its Representation Election Petition, the Board of Regents took a vote related to the status of GSRA's. At its May, 2011, meeting, the Board voted 6-2 to pass the resolution quoted above. The resolution stated that the Board of Regents "supports the rights of University Graduate Student Research Assistants, whom we recognize as employees, to determine for themselves whether they choose to organize."

2. The University Is a Major Research University

The University of Michigan is a major research institution. While the total dollars expended on research increased between 1981 and today, the mission-central role of research has not changed. For example, in 1981 the University ranked #5 among all universities in the country in terms of total research expenditures; in 2009, it ranked #2. (*NSF WebCASPAR Integrated Science and Engineering Resource Data System, available at <https://webcaspar.nsf.gov/TableBuilder>*). The Union has acknowledged the importance of research to the University's mission. Compare "...research is now a principle product of the institution" (*2011 Brief in Support at 2*) with "[the Union] argues that since research is one of the primary missions of Respondent..." *1981 MERC Lab Op at 802*. The ALJ made specific findings on the role of research at the University:

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<sup>2</sup> While the legal proceedings that resulted in the 1981 Decision spanned several years, in order to simplify the presentation of information, both the July 14, 1980 ALJ Supplemental Decision and Recommended Order and the August 27, 1981 Commission Decision and Order are referred to as the "1981 Decision."

The record indicates the broad scope of grant research. A large number of grant sources contribute very large sums to research efforts conducted within the context of the University. Some funds provide for fellowships and other unconditional grants. Others support research assistants through grants to prime researchers, including funds to be used to support graduate students. Obligations attach to this process. The obligation may be no more than to pursue a line of research to determine if it is fruitful. Here, no results or poor results may be an answer. The size of this funding equals a significant fraction of the Respondent's budget. The availability of this funding eases the burden of the University since faculty research is one of the missions of a research university, as well as a vital professional activity of the individual faculty members. The availability of these outside funds to support research within the university has led to the growth of the university as a major research center. This growth includes faculty research and the independent research centers outside the academic departments or schools. *1981 MERC Lab Op at 808.*

### 3. External Funding Supports the Large Majority of GSRA Appointments

External funding, including funding through external grants, remains an important component of the University's research enterprise. In fiscal year 2010, the University's total research volume exceeded \$1.14 billion. (<http://research.umich.edu/quick-facts/>) Of this amount, \$751 million came from federal sources. *Id.* Grants, including federal research grants, are essential to the funding of GSRA's. For example, in the College of Engineering, which appoints approximately 1,000 GSRA's in any given fall or winter semester, approximately 89% of GSRA funding comes from sponsored funds. *Munson Affidavit (Tab A)*. In the College of Literature, Science and the Arts ("LSA"), which appoints approximately 350 GSRA's in a given fall or winter semester, approximately 84% of GSRA funding is from sponsored funds. *McDonald Affidavit (Tab B)*. On the Ann Arbor campus, approximately 81% of GSRA appointments during the Winter 2011 semester were supported by sponsored funds. *McDonald Affidavit*. In 1981, the ALJ found that the "RA assistantships are based entirely on funds coming from outside the University....The majority are federal funds." *1981 MERC Lab Op at 797.*

Since most GSRA appointments are funded by sponsored funds, there is an expectation that the work performed by such GSRA's is relevant to the purposes of the grant or other external funding. For example, in LSA, laboratory science faculty are expected to maintain the external funding necessary to support their research; similar expectations apply to faculty in statistics, mathematics, and the social sciences if their research requires significant support for personnel or supplies. *McDonald Affidavit*. Similarly, in the College of Engineering, faculty members are expected to raise enough funding to support a group of students, other laboratory personnel (if applicable), and associated laboratory/facilities (if the work is laboratory-based) to build and maintain a cutting-edge research program. *Munson Affidavit*. Such funding allows the faculty member to pursue new lines of research and to support the education of graduate students, including through GSRA appointments.

The relationship between outside funds and the subject matter of research performed by the faculty who receive such funding and the students they support is consistent with 1981 practices. In 1981, the ALJ stated that

[t]he vehicle which brings these funds to the University campus is the individual faculty member, not the University as such. These funds come from federal government agencies, private foundations, and other sources....These agencies and foundations make available substantial amounts of money to researchers pursuing areas of research of interest to the funding source. *1981 MERC Lab Op at 797*.

In its 2011 Brief in Support, the Union stressed that "the grant was awarded because the funding entity wanted the research performed....In short, the funder pays for a product; the University – with the help of the Research Assistant – provides it." (p. 6). The Union also noted the relationship between the terms of a grant and a GSRA appointment in arguing its position in 1981: "...Charging Party stresses that every RA appointment is issued pursuant to the



conditions of a grant by an outside funding source. The grant is based on the principal researcher's proposal to conduct certain research, and the granting agency awards its funds on that premise. No matter what relationship the research may have to the thesis of an individual graduate student appointed as an RA, the student assistant is assisting the prime researcher in fulfilling his obligation to the granting source." The University agrees with the Union that this relationship between a granting agency, funded research, the faculty researcher, and the GSRAs he or she supports remains much as it was in 1981. While the role of external funding is important, "it is the nature of the work, and not the source of the funding that distinguishes [GSRAs] from other GSAs." *1981 MERC Lab Op at 811.*

4. GSRA Appointments Result from a "Matching Process" Between Faculty and Graduate Students

The University of Michigan, as a nationally and internationally recognized research institution, competes with the world's top universities for the very best graduate students. When selecting an institution for graduate study, many prospective graduate students carefully consider the program's faculty. Students consider the areas of research being undertaken by faculty at a particular institution when deciding where to apply, and they explore the possibility of working with particular faculty before selecting a graduate institution. For example, in the College of Engineering, it is common for prospective graduate students to visit their department of choice, partly to meet with the faculty and assess the potential match of student research interests with those of the faculty. *Munson Affidavit.*

Given the importance of the match between faculty and graduate student research interests, many faculty members view GSRA appointments<sup>3</sup> as an important support mechanism for their graduate students. The GSRA appointment that results from this match between faculty mentor and student mentee is an important codification of the faculty member's commitment to the student with respect to providing both research opportunities and financial support for that research. As a result, many faculty actively and specifically seek external funding for GSRA's. Further, funding packages, which are often predicated on external funding, are important to recruitment of graduate students. For example, in the College of Literature, Science and the Arts, admitted graduate students receive a guarantee of full funding for five years. *McDonald Affidavit*. Similarly, in the College of Engineering, entering Ph.D. students are typically guaranteed full funding for their four to five years of study. *Munson Affidavit*. The availability of such funding makes a particular faculty member, a program, and a university more competitive in the recruitment and retention of top graduate students.

The ALJ described the matching and selection relationship in 1981 as follows:

RA appointments rarely partake of the fairly routine selection of candidates and mechanical assignment of sections characteristic of TA assignments in the larger departments. Usually the RA appointment grows out of a relationship between a graduate student and a faculty member....A graduate student will often seek out that faculty member whose area of concentration most closely coincides with the student's interest. Sometimes the student will have come to the University of Michigan for the specific purpose of studying with a particular member of the faculty. RA appointments may develop from this relationship. The student's interest may change due to his earlier years of graduate study, and he may shift from one professor to another for access to specific guidance in his studies. However, a large number of RA appointments have a more prosaic origin. Graduate students are aware of current research within their department

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<sup>3</sup> Although other support mechanisms are also used to support graduate students, they are not relevant to the current discussion.

or discipline. The student may shape his thesis to conform to available grants.  
*1981 MERC Lab Op at 796-797.*

Graduate student support through GSRA appointments is based on a shared interest in the nature of the research, and a shared passion for exploration of a line of inquiry. In many cases, the available funding shapes the nature of the work performed, both as a student and as a GSRA.

5. GSRA Appointments Are Academically Relevant to the Student's Graduate Studies

The matching process described above demonstrates the relationship between a graduate student's academic pursuits and appointment as a GSRA. As the AU noted, the process of matching a graduate student and his or her research to financial and academic support by the faculty can take many forms. *Id. at 798-799.* However, "[a]ll of these activities are...academically relevant to the graduate student to some degree." *Id. at 799.* The AU recognized, however, that relevance cannot be so narrowly defined as to mean only directly related to a student's dissertation.

At an institution as large and decentralized at the University of Michigan, not every GSRA appointment will be identical in terms of its origin or relevance to the dissertation. For example,

[a] graduate student may join a research project as an RA in order to use the data developed with a totally different application. He may work on it to develop a technique or a skill, or because of his interest in the area, although his own thesis may be unrelated. Often the graduate student receiving an RA appointment has not selected his thesis...At the other extreme, the student may persuade a professor to incorporate his proposed thesis subject into a related grant proposal.... *Id. at 799.*

This is due, in part, to the fact that academic relevance is not constrained to the four corners of a dissertation. Rather, academic relevance extends to the acquisition of research skills both in

and out of a laboratory, exposure to the grant-writing process, learning to work collaboratively with colleagues on research activities, developing the skills necessary to succeed in a research team, etc. GSRA appointments support all of these activities. In the College of Engineering, for example, Ph.D. programs are designed to teach students *how* to do research. *Munson Affidavit*. While it is the norm that all or nearly all research conducted by a GSRA is related to his or her dissertation, the development of research skills, the acquisition and utilization of collaborative skills, etc. are also an important part of the educational process that is often supported through a GSRA appointment. *Id.* The same is true in the College of Literature, Science, and the Arts. *McDonald Affidavit*.

In 1981, the ALJ also noted that a “newly appointed RA may spend a greater time learning than he will in producing valuable knowledge.” *1981 MERC Lab Op at 800-801*. As a research university, education of future faculty members and other researchers is an important component of our mission. Faculty and departments choose to appoint GSRA’s in support of their studies, even when hiring an experienced researcher would be more cost-effective, in recognition and support of our educational mission. *Munson Affidavit*.

The Union has noted that not all GSRA appointments are directly related to the student’s academic interests. *See Jokisaari Affidavit, #12*. The Union made a similar argument in 1981: “Charging Party’s witnesses were as enthusiastic in declaring the academic irrelevancy of their RA appointments as Respondent’s cross-examination and witnesses were confident of the relevancy in every case. Despite this conflict of testimony, it is clear that in virtually all cases, the RA appointment reflects and closely tracks the student’s academic discipline and interests.” *1981 MERC Lab Op at 801*. As discussed above, academic relevance is broader than

a narrow dissertation topic. Nonetheless, most GSRA's are appointed to perform research that is directly or indirectly related to the dissertation topic. Such work often results in important scholarly publications for the student; such publications remain an important asset to graduating Ph.D. students entering the job market. *McDonald Affidavit*.

6. Evaluation of GSRA Performance is Intertwined with Academic Evaluation as a Graduate Student

The vast majority of GSRA appointments arise from a shared scholarly interest between faculty member and graduate student. The nature of GSRA appointments discussed above makes it nearly impossible to separate evaluation of an individual's performance as a graduate student researcher and his or her performance as a GSRA. For example, in the College of Engineering, faculty evaluation of a Ph.D. student considers progress toward degree or progress in research; no separate evaluation is undertaken of performance as a GSRA, as in nearly every case, there is no performance separate from that of a student. *Munson affidavit*.

In 1981, the ALJ stated that "[e]valuation of the work of the RA will, in most cases, be indistinguishable from evaluation of his progress as a student since the quality of this research work will relate to his progress towards or on his thesis." *1981 MERC Lab Op at 800*. As the ALJ concluded:

Research carried on as part of a course of study is often identical with the research assigned as part of the 'work' of the RA. In this situation study and work are identical. The concerns of the department or professor with the work of the graduate student as a 'student' and with his 'production' as an 'employee' are one. Evaluating the quality of the work will permit no distinction between evaluation of the student in his progress as a degree candidate and as an employee carrying out research. This is true for the majority of research assistants, not only for those whose thesis work is identical with the research appointment. *Id. at 809*.

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October 17, 2011



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GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN EMPLOYMENT RELATIONS COMMISSION  
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*Re: Local Request  
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AFFIDAVIT OF DAVID C. MUNSON, JR.

STATE OF MICHIGAN        )  
  )ss  
COUNTY OF WASHTENAW    )

Being duly sworn I, David C. Munson, Jr., state the following:

1. I am the Robert J. Vlasic Dean of Engineering and tenured Professor of Electrical Engineering and Computer Science at the University of Michigan. I have served as Dean since 2006.
2. Pursuant to Regents' Bylaw 5.06, as Dean I am appointed by the University of Michigan Board of Regents to act as executive officer of the College of Engineering.
3. Prior to serving as Dean, I served as Chair of the Electrical Engineering and Computer Science Department from 2003-2006.



4. I received my B.S. degree from the University of Delaware in 1975, and M.S., M.A. and Ph.D degrees in 1978, 1978, and 1979, respectively, from Princeton University.
5. I served on the faculty of the University of Illinois from 1979 – 2003, where I was the Robert MacClinchie Distinguished Professor of Electrical and Computer Engineering.
6. I conduct research in the area of signal and image processing, with a specialty in synthetic aperture radar. I am a Fellow of the IEEE, a past president of the IEEE Signal Processing Society, founding editor-in-chief of the IEEE Transactions on Image Processing, and co-founder of the IEEE International Conference on Image Processing. In addition to multiple teaching awards and other honors, I was presented the Society Award of the IEEE Signal Processing Society and I was the Texas Instruments Distinguished Visiting Professor at Rice University.
7. I am coauthor of multiple textbooks, including "Engineering Our Digital Future," which is introducing engineering into hundreds of high schools nationwide via the Infinity Project.
8. The College of Engineering's mission statement is as follows: "To be the place of choice for engineering education and research...A Michigan institution that challenges its students, faculty and staff to learn, to grow, to achieve and to serve the needs of society...A place where excellence, excitement, innovation and impact define the style and substance of its activities."
9. The College of Engineering's key goals are: "(1) To provide a continuously improving educational and research environment in which faculty, administrators, students and staff work together to educate our students to lead, to have impact, and to make significant contributions to their professions, industry, government, academia and society; (2) To attract diverse, outstanding students, and to motivate and educate them to reach their full potential as leaders in engineering professions."
10. The College of Engineering comprises 12 departments and divisions. The College has approximately 365 tenured and tenure-track faculty, and approximately 100 research-track

faculty. The College enrolls approximately 5,650 undergraduate students, 1,750 master's degree students, and 1,500 doctoral students.

- 11. The College of Engineering's departments are highly ranked and have strong reputations for excellence. U.S. News & World Report, 2011, ranked the College's graduate programs as follows:

<u>Program</u>	<u>Graduate Ranking</u>
Aerospace Engineering	5
Biomedical Engineering	12
Chemical Engineering	13
Civil Engineering	8
Computer Engineering	7
Electrical Engineering	7
Environmental Engineering	6
Industrial and Operations Engineering	2
Materials Science and Engineering	7
Mechanical Engineering	5
Nuclear Engineering and Radiological Sciences	1

\*U.S. News does not rate Atmospheric, Oceanic and Space Sciences or Naval Architecture and Marine Engineering.

- 12. In fiscal year 2011, the College of Engineering had total research expenditures of \$179 million.
- 13. Faculty in the College of Engineering are expected to secure external financial support for their research. This expectation extends to securing funding for graduate students, other laboratory personnel (if applicable), and associated laboratory/facilities space as applicable. The purpose of this funding is to establish and maintain cutting-edge research programs and to educate students.

14. In a given fall or winter semester, the College of Engineering appoints approximately 1,000 Graduate Student Research Assistants (GSRAs). In the Winter 2011 semester, the College appointed 1,011 GSRAs.
15. During the Winter 2011 semester, approximately 89% of funding for GSRAs in the College of Engineering came from external funding sources, including grants, contracts and gifts (together, "sponsored funds").
16. The College of Engineering recruits the best graduate students from across the nation and the world. It is common for prospective graduate students to visit their department of choice, partly to meet with the faculty and assess the potential match of student research interests with those of the faculty. This matching process has a long history; I made the same type of visits when I was selecting a graduate school in 1975.
17. The College of Engineering supports our Ph.D. students through a number of mechanisms, including fellowships, GSRA appointments, and Graduate Student Instructor (GSI) appointments. Ordinarily, the College does not accept a Ph.D. student unless we can guarantee full funding for their four-to-five years of study at the University. The College sees the guarantee of full funding as an advantage when recruiting graduate students, and it is made possible in part by external funding received by faculty for this purpose.
18. Ph.D. programs in the College of Engineering are designed to teach graduate students how to become researchers. This includes how to design a research project, how to conduct research, how to work collaboratively as part of a laboratory or research team, how to secure external funding, how to write academic papers and seek their publication, and how to become a member of the global research community.
19. The College of Engineering appoints GSRAs to undertake research, even as the graduate students are developing the skills necessary to conduct research. In most cases, a faculty

member's research program would progress more quickly if post doctoral research fellows, research scientists, etc. were utilized to conduct the research instead of GSRAS because such individuals are already trained to do research and have deep expertise. However, the College of Engineering favors supporting graduate students as they acquire research skills, and takes seriously its mission to educate future researchers; this is reflected in the College's utilization of approximately 1,000 GSRAs each fall and winter semester.

20. In the College of Engineering, graduate students are evaluated in terms of progress toward degree and progress in research. This review is undertaken on an annual basis, and focuses on academic progress as a student. No separate evaluation is conducted to assess performance as a GSRA.

21. If I am called to testify at a hearing in this matter, I have personal knowledge of the facts I have stated above and would be competent to give such testimony.

David C. Munson, Jr.  
DAVID C. MUNSON, JR.

Subscribed and sworn before me on this 13<sup>th</sup> day of October 2011.

Kathleen J. Boblitt  
Notary Public  
Washtenaw County, Michigan  
My commission expires on:  
6/23/2015  
Acting in Washtenaw County

**KATHLEEN J. BOBLITT**  
NOTARY PUBLIC - STATE OF MICHIGAN  
COUNTY OF WASHTENAW  
My Commission Expires June 23, 2015  
Acting in the county of Washtenaw

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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  
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AFFIDAVIT OF TERRENCE J. MCDONALD

STATE OF MICHIGAN        )  
  )ss  
COUNTY OF WASHTENAW    )

Being duly sworn I, Terrence J. McDonald, state the following:

1. I am the Dean of the College of Literature, Science, and the Arts ("LSA") at the University of Michigan. I have served as Dean since 2003. I am also a tenured Professor of History and an Arthur F. Thurnau Professor.

2. Pursuant to Regents' Bylaw 5.06, as Dean I am appointed by the University of Michigan Board of Regents to act as executive officer of the College of Literature, Science, and the Arts.
3. Prior to serving as Dean, I served as Assistant Professor, Associate Professor with Tenure, and Professor with tenure in the Department of History at the University.
4. I received my B.A. degree from Marquette University in 1971, and my Ph.D. from Stanford University in 1979.
5. I taught for two years – 1978-1980 -- as a Mellon Postdoctoral Instructor at the California Institute of Technology (Caltech) in Pasadena
6. I am the author or editor of four books and numerous articles.
7. At the University, I have received the Ruth M. Sinclair Award for Student Counseling (1983), the Faculty Recognition Award for Outstanding Contributions to Teaching, Scholarship, and Service (1988), the Amoco Foundation Good Teaching Award (1991), and a State of Michigan Teaching Excellence Award (1991). I was appointed an Arthur F. Thurnau Professor for my contributions to undergraduate education in 1993.
8. I have been recognized for my work in American urban political history with prizes from the Social Science History Association and the California Historical Society. I have been a Guggenheim Fellow and have received other fellowships from the National Endowment for the Humanities and the University of Michigan Humanities Institute. I have served on the editorial boards of the journals *Social Science History*, *Historical Methods*, and *Studies in American Political Development*.

9. The College of Literature, Science, and the Arts' mission statement is as follows: "To achieve pre-eminence in creating, preserving and applying knowledge and academic values, to enrich the lives of students, and to transform them into leaders and citizens who challenge the present and illuminate the future."
10. According to the 2010 rankings issued by *U.S. News & World Report* and the 2010 National Research Council rankings, LSA has 85 departments, programs, and fields of study within departments and programs in the top 25 in the nation, including 9 ranked number 1, as well as 44 in the top five, and 67 in the top 10.
11. LSA has approximately 860 tenured and tenure-track faculty. The College enrolls approximately 17,000 undergraduate students, 255 master's degree students, and 2076 doctoral students.
12. In fiscal year 2010, LSA had total sponsored research expenditures of \$64,908,338.
13. In LSA, laboratory science faculty are expected to maintain the external funding necessary to support their research; similar expectations apply to faculty in statistics, mathematics, and the social sciences if their research requires significant support for personnel or supplies. This includes an expectation that faculty secure external funding to support graduate students.
14. In a given fall or winter semester, LSA appoints approximately 350 Graduate Student Research Assistants (GSRAs). In the Winter 2011 semester, LSA appointed 350 GSRAs; approximately 92% were appointed in the natural sciences.

15. During the Winter 2011 semester, approximately 84% of funding for GSRA's in LSA came from external funding sources, including grants, contracts and gifts (together, "sponsored funds").
16. Based on my review of campus-level data for the Ann Arbor campus, approximately 81% of Winter 2011 GSRA appointments were funded with sponsored funds.
17. In LSA, all graduate students are admitted with a guarantee of full funding for five years. Across the sciences, close to half of the funding that is committed in these full-funding plans is expected to come from GSRA support. For example, the fraction of support that comes from GSRA appointments is as high as 60-70% in departments such as Physics, Astronomy, and Molecular, Cellular, and Developmental Biology. LSA believes that the guarantee of full funding is important to the recruitment of top graduate students, and the GSRA component of such funding guarantees in the sciences is made possible in large part by external funding received by faculty for this purpose.
18. Ph.D. programs in LSA, particularly in the sciences, are designed to teach graduate students how to become researchers. This includes how to construct a research project, how to conduct research, how to work collaboratively as part of a laboratory or research team, how to secure external funding, how to write academic papers and seek their publication, etc.
19. LSA appoints GSRA's to undertake research, even as the graduate students are developing the skills necessary to conduct research. In most cases, a faculty member's research program would progress more quickly if post doctoral research fellows, research scientists, etc. were utilized to conduct the research instead of GSRA's because

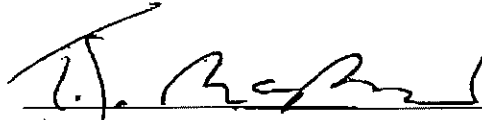


such individuals are already trained to do research and have deep expertise. However, LSA favors supporting graduate students as they acquire research skills, and takes seriously its mission to educate future researchers.


20. It is not possible to predict in advance which research projects will ultimately be included in a thesis; if research outcomes were that predictable, there would be little point to doing the research. Nevertheless, it is the hope that virtually all graduate student research undertaken as a GSRA will ultimately be incorporated into the student's thesis.
21. Recent surveys of University Ph.D. graduates in Physical Sciences and Engineering reveal that over 90% have submitted at least one paper, and 84% have published one or more papers during their graduate career. These percentages have increased significantly over time, reflecting the increased pressure to publish. For example, as recently as 2002-2006, the publication rate – 78% with at least one published paper – was significantly lower than it is today. This trend reflects the fact that experience with writing and publishing papers, and a substantial publication record, is part of the training that graduate students need if they are to be successful in seeking employment after graduation. Virtually all of these papers include research conducted by GSRA's that are co-authors on the paper.
22. Aside from the extremely rare instances of misconduct (theft, workplace violence, sexual harassment, etc.) there are essentially no conditions that could lead to a negative GSRA performance evaluation that are not related to a graduate student making poor progress on their research. Furthermore, unlike staff employed for the purpose of

conducting research (e.g. postdoctoral research fellows, assistant research scientists),  
evaluation of GSRA performance is directly related to academic progress.

- 23. If I am called to testify at a hearing in this matter, I have personal knowledge of the facts I have stated above and would be competent to give such testimony.

  
 \_\_\_\_\_  
 Terrence J. McDonald

Subscribed and sworn before me on  
this 14<sup>th</sup> day of October 2011.

  
 \_\_\_\_\_  
 Notary Public  
 Washtenaw County, Michigan  
 My commission expires on:  
9-25-2013  
 Acting in Washtenaw County

E. HUMPERT  
 Notary Public, State of Michigan  
 County of Washtenaw  
 My Commission Expires Sep. 25, 2013  
 Acting in the County: Washtenaw

**ORIGINAL**

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

\_\_\_\_\_  
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(248) 355-2150

**PROOF OF SERVICE**

State of Michigan        )  
                                  ) ss  
County of Washtenaw    )

Elizabeth B. Humpert, being duly sworn, deposes and says that on the 17th day of October, 2011 she served a copy of the University of Michigan's RESPONSE TO PETITIONER'S MOTION FOR RECONSIDERATION upon the GRADUATE EMPLOYEE ORGANIZATION/AFT-MI, AFT, AFL-CIO, Mark Cousens, counsel for the Graduate Employee Organization, by enclosing said document in an envelope addressed to his office at 2621 Evergreen Road, Suite 110, Southfield, MI, 48076, and by depositing the same with UPS for overnight delivery.

*E. Humpert*

Elizabeth B. Humpert

Subscribed and sworn before me this  
17th day of October, 2011.

*Denise M. Truesdell*

Notary Public, Washtenaw County, MI

Acting in Washtenaw County, MI

My Commission Expires: 12-1-15

DENISE M. TRUESDELL Notary Public, State of Michigan County of Washtenaw My Commission Expires Dec. 01, 2015 Acting in the County of <i>Washtenaw</i>
---

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-

MELINDA DAY,  
Intervenor,

-and-

STUDENTS AGAINST GSRA UNIONIZATION,  
Intervenor.

---

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**SUPPLEMENTAL RESPONSE OF PUBLIC EMPLOYER UNIVERSITY OF MICHIGAN****A. Introduction**

The Public Employer University of Michigan (hereinafter "University") offers the following supplemental response to correct and clarify the record.

**B. Procedural History**

On April 27, 2011, the 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 Commission issued its Decision and Order dismissing the Union's petition. The Union filed a Motion for Reconsideration. The University filed a Response to Petitioner's Motion for Reconsideration on October 17, 2011. Thereafter, the Intervenor filed a Motion to Intervene and to Deny Petitioner's Motion for Reconsideration.

**C. Response to "Statement of Questions Involved"**

The Intervenor's Brief in Support of Motion to Intervene and In Opposition to Motion for Reconsideration included the following "Statement of Questions Involved:"

II. Should the Michigan Employment Relations Commission reconsider its dismissal of the representation petition of a union seeking to organize people whom the Commission has already ruled are not public employees?

University of Michigan's answer:	No.
Graduate Employees Organization/AFT's answer:	Yes.
Students Against GSRA Unionization's answer:	No.

The University does not agree with the response Intervenor provided to this question on behalf of the University. As discussed at pages 2 and 4 of the University's Response to Petitioner's

Motion for Reconsideration, on May 19, 2011, the Regents of the University of Michigan voted 6-2 to pass the following resolution:

Resolved, that consistent with the University of Michigan's proud history of strong, positive, and mutually productive labor relations, the Board of Regents supports the rights of University Graduate Student Research Assistants, whom we recognize as employees, to determine for themselves whether they choose to organize.

The University's response to the Intervenor's second "Question Involved" is, therefore, "Yes" and the University wishes the election to go forward.

D. Clarification of University's Position

To clarify, at the time the Board of Regents passed its resolution on May 19, 2011, those in the majority who supported the resolution understood the facts as presented in the University's earlier brief and affidavits, but concluded that the facts in 2011 had substantially changed since 1981. For example, the size and scope of the research enterprise has changed considerably. In 1981, the research expenditures for the University totaled approximately \$130 million. Today, those expenditures exceed \$1 billion and are central to the University's business model. In 1981, there were only about 400 GSRA's, today the total number is over 2,000. The University continues its support of the election process.

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November 4, 2011

STATE OF MICHIGAN  
EMPLOYMENT RELATIONS COMMISSION  
LABOR RELATIONS DIVISION

THE UNIVERSITY OF MICHIGAN,

Public Employer,

and

Case No. R11 D-034

GRADUATE EMPLOYEES ORGANIZATION/AFT,

Petitioner-Labor Organization,

and

MELINDA DAY,

Intervenor,

and

STUDENTS AGAINST GSRA UNIONIZATION,

Intervenor.

---

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**BRIEF IN SUPPORT OF MOTION TO INTERVENE AND IN  
OPPOSITION TO MOTION FOR RECONSIDERATION**



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### JURISDICTIONAL STATEMENT

The Commission lacks subject-matter jurisdiction in the instant case. The Commission has essentially reached this conclusion twice before: once in 1981, and again in September of this year. *Regents of the Univ of Michigan and Graduate Employees Org*, 1981 MERC Labor Op 777; September 14, 2011 Decision and Order. The Commission has never ruled otherwise.

The key holding in both rulings was that graduate student research assistants at the University of Michigan are not public employees under the Public Employment Relations Act. The Commission has subject-matter jurisdiction over public employees only. *Lansing v Carl Schlegel, Inc*, 257 Mich App 627 (2003); *Prisoners' Labor Union at Marquette v Dep't of Corrections*, 61 Mich App 328 (1975).

**STATEMENT OF QUESTIONS INVOLVED**

**I. Does the organization Students Against GSRA Unionization meet the requirement for intervention in the instant case?**

University of Michigan's answer: Unknown.

Graduate Employees Organization/AFT's answer: Unknown.

Students Against GSRA Unionization's answer: Yes.

**II. Should the Michigan Employment Relations Commission reconsider its dismissal of the representation petition of a union seeking to organize people whom the Commission has already ruled are not public employees?**

University of Michigan's answer: No.

Graduate Employees Organization/AFT's answer: Yes.

Students Against GSRA Unionization's answer: No.

## STATEMENT OF FACTS

This matter concerns an issue that has been settled in Michigan for three decades — that graduate student research assistants (RAs)<sup>1</sup> at state universities are not public employees and therefore cannot participate in mandatory collective bargaining under the Public Employment Relations Act (PERA). This fact was originally recognized by the Commission itself in 1981, in *Regents of the University of Michigan and Graduate Employees Organization*, 1981 MERC Labor Op 777.

In April of this year, the union that lost the 1981 case — the Graduate Employees Organization/AFT (GEO) — returned to the Commission seeking again to have RAs organized as public employees against the same “employer,” the University of Michigan. In an order issued in September of this year, The Commission refused to disturb its 1981 ruling. September 14, 2011 Decision and Order. The GEO now seeks reconsideration of that September order.

The legal treatment of graduate students at public universities in Michigan has been unswerving for the last thirty years: two kinds of graduate students have met the PERA definition of public employee, while a third kind has not. The distinction between graduate students who are and are not public employees was set forth in the same 1981 Commission decision that held that RAs at Michigan’s public universities are not public employees.

The 1981 dispute concerned the GEO’s claim that all people “holding appointments as graduate student assistants at the University of Michigan are employees within the meaning of PERA when engaged in activities within the scope of the graduate student appointment.”

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<sup>1</sup> In the university’s current nomenclature, RAs are “GSRAs” (graduate student research assistants). For ease of reference, Intervenor will refer to such an assistant as an RA, the title that the Commission adopted in its 1981 ruling.

*Graduate Employees Org*, 1981 MERC Labor Op at 791. The record revealed that graduate students were split into three categories: (1) graduate student teaching assistants (TAs), whose duties consisted primarily of teaching some undergraduate courses, *id.* at 780; (2) graduate student staff assistants (SAs), whose duties included counseling undergraduates and advising them about course selection, *id.* at 781; and (3) (RAs), who generally “perform[ed] research under the supervision of the faculty member who [was] the primary researcher of a research grant.” *Id.*<sup>2</sup>

After nineteen days of hearings, a 3,000-page record, several volumes of exhibits, and legal briefs that both approached nearly 100 pages, the Administrative Law Judge (ALJ) recommended that TAs and SAs be categorized as public employees and that RAs not be. The Commission accepted that recommendation.

The Commission explained why RAs are not public employees:

The nature of RA work is determined by the research grant secured because of the interests of particular faculty members and/or by the student’s own academic interest. They are individually recruited and/or apply for the RA position because of their interest in the nature of the work under the particular grant. Unlike the TA’s who are subject to regular control over the details of their work performance, RA’s are not subject to detailed day-to-day control. RA’s are frequently evaluated on their research by their academic advisors and their progress in their appointments is equivalent to their academic progress. Nor does the research product they provide further the University’s goal of producing research in the direct manner that the TA’s and SA’s fulfill by their services. Although the value of the RA’s research to the University is real it is clearly also more indirect than that of teaching . . . undergraduate courses. RA’s . . . are working for themselves.

*Id.* at 785-86.

The Commission’s decision was not appealed to the Court of Appeals.

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<sup>2</sup> In the university’s current nomenclature, TAs are referred to as graduate student instructors (GSIs); SAs are graduate student staff assistants (GSSAs); and as noted above, RAs are graduate student research assistants (GSRAs). For ease of reference, Intervenor will use the abbreviations that the Commission used in 1981.

On April 27, 2011, the GEO filed a representation petition with the Commission. As in 1981, the GEO sought to represent RAs at the University of Michigan. The claimed unit size was 2,200.

At a May 19, 2011 meeting of the University of Michigan Board of Regents, the following resolution was passed by a 6-2 vote:

Resolved, that consistent with the University of Michigan's proud history of strong, positive, and mutually productive labor relations, the Board of Regents supports the rights of University Graduate Student Research Assistants, whom we recognize as employees, to determine for themselves whether they choose to organize.

<http://www.regents.umich.edu/meetings/06-11/2011-06-I-1.pdf> (last visited October 31, 2011).<sup>3</sup>

With this resolution, the controlling board of the University of Michigan declared that contrary to the Commission's holding, RAs are public employees who can engage in mandatory collective bargaining under PERA.

On July 28, 2011, Melinda Day filed a motion to intervene and to dismiss the GEO's representation petition for lack of subject-matter jurisdiction. The brief in support of that motion discussed the jurisdictional impact of the Commission's 1981 decision and the application of res judicata. On August 3, 2011, the union filed a motion to deny the intervention. This motion and the accompanying brief did not cite a single court case or Commission decision, and the brief did not address the Commission's 1981 decision, res judicata, or jurisdiction. Instead, the brief focused on Day's and her law firm's motives for seeking to intervene.

On September 14, 2011, the Commission unanimously dismissed the GEO's representation petition. The Commission noted that its 1981 decision necessarily raised a jurisdictional question regarding the representation petition submitted in April 2011:

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<sup>3</sup> The six Democratic Party regents voted in favor. The two Republican Party regents were opposed.

Usually, we do not inquire into the nature of an employment relationship or the legality of a bargaining unit when we have a Consent Election Agreement signed by the parties. However, this is not the usual case because the issue of the Commission's jurisdiction is squarely before us in light of our previous decision involving these same parties. To decide this issue, we have no information that would allow us to reach a conclusion contrary to the one reached in 1981, that RAs are not employees under PERA.

September 14, 2011 Decision and Order at 3-4. The Commission then explained that an employer and union could not collude to manufacture jurisdiction:

Our jurisdiction derives from statutory authority and does not extend to individuals who are not employees of a public employer. The Commission's jurisdiction cannot be expanded by an agreement. . . . We cannot find that RAs are employees based solely upon an agreement between the parties. Absent a showing of substantial and material change of circumstance, we are bound by our previous decision.

...

Having previously determined that RAs are not employees entitled to the benefits and protection of PERA, we decline to declare that they have become employees based on the Employer's change of heart and present willingness to recognize them as such. The RAs cannot be granted public employee status under PERA predicated on the record before us.

*Id.* at 4. While the Commission accepted Intervenor Day's legal arguments as to jurisdiction, it interpreted R. 423.145(3) to mean that she could not intervene. September 14, 2011 Decision and Order at 4-5. The Commission also indicated a willingness to participate in some sort of *ultra vires*, nonbinding election between the union and the University should they wish one. *Id.* at 4.

On October 3, 2011, the union filed a motion requesting that the Commission reconsider its September 14, 2011 rejection of the GEO's representation petition. In this motion, the GEO finally addressed the impact of the Commission's 1981 decision, briefly claimed that the University was not improperly attempting to confer jurisdiction, and tried to introduce some "new" facts that it claims should prevent application of the doctrine of *res judicata*.



Some of these factual claims were introduced in the GEO's reconsideration brief, and others were in an attached affidavit sworn to by an RA. The union claims the following are new facts:

- 1) The University receives \$1,500,000,000 in research grants;<sup>4</sup>
- 2) RAs are "essential to the research goals of the University";<sup>5</sup>
- 3) The University "acknowledges" that the Family Medical Leave Act applies to RAs, meaning they must be employees;<sup>6</sup>
- 4) RAs have taxes and FICA deducted from their stipends;<sup>7</sup>
- 5) RAs are required to take an employment oath;<sup>8</sup> and
- 6) One RA (of the 2,200) is working on projects "that are unrelated to his academic interests" and a second RA "is working on a project which will be used in part for his

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<sup>4</sup> Brief in Support of Motion for Reconsideration at 2. However, the attached affidavit says \$1.14 billion. October 3, 2011 Affidavit of Andrea M. Jokisaari at ¶ B. 5.

<sup>5</sup> Brief in Support of Motion for Reconsideration at 3.

<sup>6</sup> Brief in Support of Motion for Reconsideration at 9.

The union cites an "**Academic** Human Resources" (emphasis added) web page, <http://www.hr.umich.edu/acadhr/grads/gsra/benefits.html#vacation> (last visited October 31, 2011), but fails to provide the text from the university website. This text states:

Leaves of Absence from an academic program are academic issues handled locally by each academic unit.

In general, due to the limited term nature of [RA] appointments, no leaves of absence are available during the course of the appointment period. However, if an individual has been appointed by the University, in any capacity, for 12 months or more and has worked at least 1250 hours during the 12 months immediately proceeding [sic] the request for leave, a federally mandated Family Medical Leave may be available. In no case can an FMLA leave extend beyond the previously-processed appointment end date. The University complies fully with the Family Medical Leave Act.

<sup>7</sup> October 3, 2011 Affidavit of Andrea M. Jokisaari at ¶ C. 7.

<sup>8</sup> Brief in Support of Motion for Reconsideration at 9.

The oath requirement can be found at <http://spg.umich.edu/pdf/201.17.pdf> (last visited October 31, 2011). That web page does not indicate whether RAs must take the oath. Regardless, the oath requirement is not new. The web page indicates that the policy requiring the oath was last revised in 1978, three years before the 1981 decision. Hence, the union could have cited the oath requirement in 1981.

academic interests but will also be published in scholarly journals unrelated to his area of study.”<sup>9</sup>

Intervenor Students Against GSRA Unionization is filing the instant motion seeking to intervene in this action and have the Commission deny the union’s motion for reconsideration.

## ARGUMENT

### **I. Intervenor Students Against GSRA Unionization meets the requirement to intervene.**

R. 423.145(3) allows a group of the purported employees to intervene in a representation petition proceeding if that group represents more than 10% of the bargaining “unit claimed to be appropriate.” Intervenor Students Against GSRA Unionization is comprised of University of Michigan RAs and has 371 members,<sup>10</sup> a figure that exceeds 10% of the GEO’s proposed representation unit of 2,200 University of Michigan RAs. Thus, Intervenor Students Against GSRA Unionization meets one of the R. 423.145(3) tests that permit a party to intervene in a representation petition matter before the Commission.

### **II. The Commission lacks subject-matter jurisdiction over graduate student research assistants, since they are not public employees by the Commission’s own ruling.**

R. 423.167, in pertinent part, states:

Generally, and without restricting the discretion of the commission, a motion for reconsideration which merely presents the same issues ruled on by the commission, either expressly or by reasonable implication, will not be granted.

In the September order, the Commission held that its 1981 decision was still controlling and that the 1981 ruling deprived the Commission of jurisdiction in the instant case.

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<sup>9</sup> October 3, 2011 Affidavit of Andrea M. Jokisaari at ¶ C. 12.

<sup>10</sup> November 1, 2011 Affidavit of Adam Duzik.

To the extent the Commission was applying *res judicata*, that doctrine does not always prevent reconsideration: “*Res judicata* does not act as a bar to an action where the law changes after the completion of the initial litigation and thereby alters the legal principles on which the court will resolve the subsequent case,” *Ditmore v Michalik*, 244 Mich App 569, 581 n. 5 (2007). In the union’s motion for reconsideration, however, the union does not argue that there has been a change in the law that alters the legal principles. In pages 5-9 of that motion, the union does discuss the law of independent contractors and employees, but provides no indication that the law has changed since 1981 in a manner that alters the legal principles in the instant case. For example, the common law test for distinguishing employees from independent contractors existed in 1981, and the Commission still held that RAs were not public employees. Further, the RAs who joined *Intervenor Students Against GSRA Unionization* do not admit to being either independent contractors or public employees; rather, they contend they are not employees or contractors of any kind and that they belong in another category altogether – students. The question of whether RAs are students or public employees is precisely the one presented to the Commission in 1981.

On pages 9-11 of the union’s Brief in Support of Motion for Reconsideration, the union claims that the Commission should defer to what it characterizes as the University of Michigan Regents’ May 19 “*express determination of fact*” that GSRAs are “public employees.” The union claims that the Regents have the power to determine facts related to the University under Const 1963 art 8, § 5, which states that the Board of Regents “shall have general supervision of its institution and the control and direction of all expenditures from the institution’s funds.”

Yet this constitutional provision says nothing about the Regents’ ability to produce binding factual findings. Second, and far more important, the union’s argument was specifically

rejected in *Regents of University of Michigan v MERC*, 389 Mich 96, 107-09 (1973). In that case, the Michigan Supreme Court found unpersuasive the argument that the University of Michigan Board of Regents under Const 1963 art 8, § 5 could make its own determination concerning who constituted a public employee at that school.<sup>11</sup>

Res judicata can also be averted where there is a change in the material facts. *Labor Council, Michigan Fraternal Order of Police v Detroit*, 207 Mich App 606, 608 (1994).<sup>12</sup> As described above, however, the 1981 fact-finding was extremely thorough. Indeed, almost all of the union's current facts were addressed in 1981. Consider in turn the union's factual claims as listed above, beginning on page 5. No specific amount of research funding was discussed in the 1981 decision, but the factual findings established by the ALJ and adopted by the Commission explicitly acknowledged that research was a critical component of the university's work:

A large number of grant sources contribute very large sums to research efforts conducted within the context of the University. . . . The size of this funding equals a significant fraction of the [University]'s budget. The availability of this funding eases the burden of the University since faculty research is one of the missions of a research university. . . . The availability of these outside funds to support research within the [U]niversity has led to the growth of the [U]niversity as a major research center.

*Graduate Employees Org*, 1981 MERC Labor Op 777, 808. Following this statement, the ALJ considered the argument that the union is making in its reconsideration motion: "In this context, one may argue that the research assistant is but a cog in the wheel of this vast enterprise, and that when he accepts an appointment as an R.A., the obligation of performing the research described

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<sup>11</sup> It seems odd that a union that became the mandatory collective bargaining agent for University of Michigan TAs over the objections of the University would now claim that the University's determination regarding public employment status should be binding.

<sup>12</sup> The union claims res judicata does not apply, because only a party may assert it. However, both Intervenor Day and Intervenor Students Against GSRA Unionization assert that the doctrine applies. Moreover, even if it did not apply, the union would still have to show why the 1981 decision would not be controlling now. After all, the arguments to overcome stare decisis largely mirror those to overcome application of res judicata. Hence, a change in the law or in the material facts would generally be required before a later case would overrule precedent.

makes him an employee.” *Id.* at 808-09. The ALJ then rejected this view. *Id.* at 811-12. So the union’s contention about the important academic and financial role of research at the University of Michigan is nothing new.

The Family Medical Leave Act does postdate 1981, having become law in 1993. Nevertheless, while the University indicates that the law “may” apply, it does not state that RAs are necessarily eligible. And fundamentally, federal treatment of graduate students does not control a question of state law.

This point is proved by the Commission’s treatment of federal tax status in the 1981 decision. In the 1981 decision, there is considerable discussion of the federal tax status of graduate students. For instance, the Commission stated “Generally, [graduate students’] earnings are subject to federal income tax. . . .” *Graduate Employees Org*, 1981 MERC Labor Op at 780. Despite recognizing that RAs had to pay federal income taxes, the Commission still held that RAs were not public employees. Thus, federal treatment is not controlling, nor is there anything new to consider in the RAs’ federal tax status.

The question of the oath is also inapposite. As indicated in footnote 8, the oath in question existed at least as early as 1978. There is nothing about this issue that could not have been raised in 1981.

The union’s last fact is that at least one of the 2,200 RAs is not working in an area “directly related to their academic interest” — an attempt to attack one of the grounds on which the Commission made its 1981 holding that RAs are students. But consider what the union is asking. Changing the status of 99.95% of RAs because of the degree status of one individual is sheer folly on its face. Further, this issue was also addressed in 1981:

A great deal of testimony was taken as to whether or not RA work was necessarily ‘relevant’ to the student’s own studies. . . . Despite this conflict of

testimony, it is clear that in virtually all cases, the RA appointment reflects and closely tracks the student's academic discipline and interests.

*Id.* at 801. In other words, the Commission has already accepted that a few RAs might be working on projects unrelated to their academic interest, and the Commission found this fact insufficient to support a finding that all RAs were public employees.

Finally, the union states that various university websites describe RAs as employees. This may be true, but the university's somewhat confused language concerning RAs is nothing new. In 1981, the Commission noted that on occasion, the university used such terms as "'hire,' 'fire,' and so forth," which the Commission stated "may strike a jarring note," but were ultimately not dispositive. *Id.* at 805. Further, if web postings were relevant, Intervenor would contend that various university websites essentially characterizing RAs as students prove them to be students and not employees, despite the claims of the union and the Board of Regents. Take, for example, the Academic Human Resources web page "What is a Graduate Student Research Assistantship?"<sup>13</sup> The page states:

A Graduate Student Research Assistantship (G.S.R.A.) is an appointment which may be provided to a student in good standing in a University of Michigan graduate degree program who performs personal research (including thesis or dissertation preparation) or who assists others performing research that is relevant to his or her academic goals.

The union has not shown any material change in the facts or the law since the Commission's 1981 decision. Therefore, there are no grounds for undoing the work involved in the weeks of hearings, thousands of pages of exhibits, and hundreds of pages of briefing that were part of that decision. The Commission should reject the union's present motion for reconsideration.

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<sup>13</sup> <http://www.hr.umich.edu/acadhr/grads/gsra/what.html> (last visited October 31, 2011).

**RELIEF REQUESTED**

Intervenor Students Against GSRA Unionization requests that the Commission grant this motion to intervene and deny the union's motion for reconsideration of the September 14, 2011 Decision and Order, which dismissed the representation petition for lack of jurisdiction.

Respectfully Submitted,

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Patrick J. Wright (P54052)  
Attorney for Intervenor Students Against  
GSRA Unionization  
Mackinac Center Legal Foundation

Dated: November 1, 2011

STATE OF MICHIGAN  
EMPLOYMENT RELATIONS COMMISSION  
LABOR RELATIONS DIVISION

THE UNIVERSITY OF MICHIGAN,

Public Employer,

and

Case No. R11 D-034

GRADUATE EMPLOYEES ORGANIZATION/AFT,

Petitioner-Labor Organization,

and

MELINDA DAY,

Intervenor,

and

STUDENTS AGAINST GSRA UNIONIZATION,

Intervenor.

\_\_\_\_\_ /

Patrick J. Wright (P54052)  
Attorney for Intervenor Students Against GSRA Unionization  
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Midland, MI 48640  
(989) 631-0900

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**Affidavit of Adam Duzik**

STATE OF MICHIGAN            )  
  )ss  
COUNTY OF WASHTENAW    )

1. My name is Adam Duzik. I am a graduate student research assistant at the University of Michigan.



2. I make this affidavit based upon personal knowledge, and I am competent to testify to the matters presented.
3. I am president of Students Against GSRA Unionization, a group of University of Michigan graduate student research assistants. The group has 371 members. Membership was generated by prospective members' response to emails soliciting research assistants who are opposed to the Graduate Employees Organization/AFT's attempt to organize University of Michigan graduate student research assistants into a compulsory union.

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Adam Duzik  
President  
Students Against GSRA Unionization

Subscribed and sworn to before me  
this \_\_\_\_\_ day  
of November 2011

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