

STATE OF MICHIGAN
IN THE COURT OF APPEALS

IN THE MATTER OF:

Court of Appeals No. _____

UNIVERSITY OF MICHIGAN
Appellee Public Employer,

Michigan Employment Relations
Commission No. R11 D-034

and

GRADUATE EMPLOYEES
ORGANIZATION/AFT,
Appellee Petitioner Labor Organization,

**PURSUANT TO MCR 7.205(E)(1),
EXPEDITED DECISION
REQUESTED BY JANUARY 31, 2012
BECAUSE THE ADMINISTRATIVE
PROCEEDING FOR WHICH THE
ATTORNEY SEEKS
INTERVENTION WILL BE
SCHEDULED FOR THE END OF
JANUARY 2012**

and

STUDENTS AGAINST GSRA
UNIONIZATION,
Proposed Intervenor,

and

MICHIGAN ATTORNEY GENERAL,
Appellant Proposed Intervenor.

R E C E I V E D
JAN - 6 2012

COURT OF APPEALS, THIRD DISTRICT
LARRY S. ROYSTER, CHIEF CLERK

**EMERGENCY MOTION TO STAY
ADMINISTRATIVE PROCEEDINGS, AND MOTION FOR IMMEDIATE
CONSIDERATION OF STAY MOTION AND EMERGENCY APPLICATION
FOR LEAVE TO APPEAL UNDER MCR 7.211(C)(6)**

Appellant Proposed Intervenor, Michigan Attorney General Bill Schuette, moves for immediate consideration of this motion and the accompanying Application for Leave to Appeal and pursuant to MCR 7.209(H)(2), seeks an order staying further administrative proceedings before Michigan Administrative Hearing System Administrative Law Judge Julia C. Stern in the captioned case for the following reasons:

1. The Michigan Employment Relations Act mandates the Commission to assure that the best interests of the public be served and *“that the interests and rights of the consumers and the people of the state, while not direct parties thereto, should always be considered, respected and protected...”* MCL 423.1.

2. In 1981 and more recently on September 14, 2011, the Commission found that Graduate Student Research Assistants (GSRAs) at the Appellee Public Employer University of Michigan (University) were not the University’s employees and thus, the Commission lacked jurisdiction to certify a representation election for Appellee-Petitioner Graduate Employees Organization/AFT (Organization). The Organization, with the University’s concurrence, sought reconsideration of the September Commission decision. The Attorney General sought intervention to the proceedings under MCL 14.101 and MCL 14.28 because no adversity of interest existed between the University and the Organization. On December 16, 2011, a majority of the Commission (MERC) decided that the Attorney General could not intervene, granted the motion to reconsider, and ordered an administrative proceeding to determine whether significant changes had occurred between 1981 and today to warrant the GSRAs being considered employees and subject to the Commission’s jurisdiction. (December 16, 2011 Commission Decision attached as Ex 1 to Application for Leave.)

3. Pursuant to the Commission’s order, the Michigan Administrative Hearing System assigned Administrative Law Judge Julia C. Stern (ALJ) to hear the administrative hearing. To the best of the Attorney General’s knowledge, the

ALJ planned to conduct a telephone conference on January 4, 2011 and pre-hearing conferences sometime before January 17 and to schedule three days of hearing for the last week of January and first week of February. The ALJ has advised the Attorney General that his only participation will be as “an observer of a public hearing”. (December 27, 2011 Stern Letter to Attorney General, attached as Ex. 8 to the Application for Leave.)

4. On December 22, 2011, the Attorney General requested the Commission to grant a stay of the administrative proceeding. The Commission advised on December 28, 2011 that it would not consider the request without an accompanying motion and brief and consideration would only occur after the opposing parties were given 10 days to respond. A motion to stay has been filed with the Commission again seeking the relief. Currently, the Commission plans to meet on January 10, 2012 (too soon for a response to be filed) and next on February 14, 2012, (long after the ALJ’s tentative hearing dates).

http://www.michigan.gov/lara/0,4601,7-154-10576_17485-248333--,00. The Court Rules permit this Court to issue a stay of this order even though the Commission, as a tribunal, has not yet responded to the relief. MCR 7.209(H)(2).

5. The Attorney General seeks a stay of the administrative hearing pending this Court’s consideration of the Attorney General’s Application for Leave:

- The Attorney General has determined, in his judgment, that intervention in this matter is necessary to protect significant state interests, and would act in the fact-finding proceeding to ensure that a complete and unbiased record is created.

- The Commission ignored the clear constitutional duty of Attorney General as the chief law enforcement officer for the State of Michigan with the duty to ensure that the laws of the state are followed. *See* Const 1963, art 5, §§ 3, 21.
- The question that the ALJ is set to soon decide could have extreme negative consequences for the University of Michigan.
- The Commission has decided that this important question is to be decided without both sides of the facts and argument being presented in the usual adversarial fashion.
- In denying intervention, the Commission failed to afford the deference to the Attorney General's decision required both by statute and case law. MCL 14.28; *see also* MCL 14.101; *Kelley v Thayer*, 65 Mich App 88, 92-93; 237 NW2d 196 (1976).
- If the proceedings are allowed to proceed without Attorney General intervention, the interests of the State, the unrepresented faculty leadership, and a large group of GSRAs will not be presented. *Syrkowski v Appleyard*, 122 Mich App 506, 513; 333 NW2d 90 (1983), *rev'd on other grounds* 420 Mich 367; 362 NW2d 211 (1985).
- If the proceedings are allowed to proceed without the Attorney General intervention, the fact-finding process will be, at best, one-sided and incomplete; at worst, the lack of an adversarial process will result in a biased and foreordained outcome and inadequate for the Commission's or court review. The Administrative Procedures Act (APA) authorizes the "parties in a contested case" by a stipulation in writing to agree "upon any fact involved in the controversy" and mandates that the stipulated fact is "binding upon all parties". MCL 24.278. Thus, where the University and the Organization stipulate to facts, those facts are binding, not only on the parties but the ALJ. MCL 24.285.
- There is no need for any quick action by the ALJ or the Commission on the question presented as the GRSAs have not been considered public employees for more than thirty years. Granting the motion to stay will merely preserve the status quo until the important issues raised can be decided.

6. The Attorney General has simultaneous with this motion to stay, filed an Application For Leave To Appeal the Commission's order denying his

intervention that contains the facts necessary to grant immediate consideration and a stay of the administrative proceedings.

CONCLUSION AND RELIEF SOUGHT

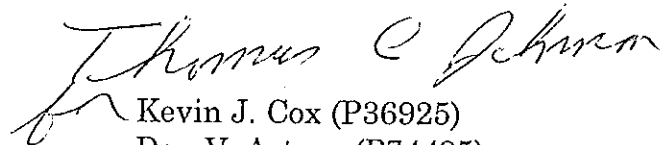
Appellant Attorney General Bill Schuette requests this Honorable Court to immediately consider and grant the Motion to Stay Administrative Proceedings, and the Application for Leave to Appeal for the reasons outlined above and more fully in the Application.

Respectfully submitted,

Bill Schuette
Attorney General

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Dated: January 6, 2012