STATE OF MICHIGAN
IN THE SUPREME COURT

REGENTS OF THE UNIVERSITY OF MICHIGAN **Supreme Ct Case No.: _____**
Appellee, **COA Case No.: 307959**
LC Case No.: 00 0000034

and

GRADUATE EMPLOYEES ORGANIZATION, AFT MI, AFT, AFL-CIO
Appellee,
and

ATTORNEY GENERAL OF THE STATE OF MICHIGAN, PROPOSED INTERVENOR,
Appellant.

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Counter Statement of Questions Involved

1. Does this Court have jurisdiction to consider an interlocutory appeal from an administrative agency?

   Appellee Graduate Employees Organization says "no."

   Appellant Attorney General says "yes."

2. Does the Attorney General have standing to intervene in a representation proceeding pending before the Michigan Employment Relations Commission?

   Appellee Graduate Employees Organization says "no."

   Appellant Attorney General says "yes."

   The Michigan Employment Relations Commission held "no."

Introduction

The Court should deny the application for leave to appeal and dismiss as moot the motion for stay. The officious application by the Attorney General is outside the jurisdiction of this Court, is not supported by law and invades the Constitutional autonomy of the Regents of the University of Michigan. The Michigan Employment Relations Commission is charged with the interpretation of the Public Employment Relations Act, MCL 423.201 *et seq*. ("PERA"). Its construction of that statute is entitled to broad deference by the Court of Appeals. The Commission's decision here was fully correct and within its authority; this Court should not disturb it. This application should be denied

The Facts

A.

1.

The Graduate Employees Organization, AFT Michigan, AFT, AFL-CIO, ("GEO") is a labor organization representing some 1700 Graduate Student Instructors working for the University of Michigan. In the Spring of 2011, GEO filed a petition with the Michigan Employment Relations Commission requesting the Commission to conduct an election among a separate unit of some 2200 Research Assistants also employed by the University. As required by R423.145 the petition was supported by the requisite "showing of interest." After extensive discussions, GEO and the University reached an agreement for a consent election. The agreement was presented to the Michigan Employment Relations Commission in September, 2011.

Consent election agreements are not just common; they are the norm. Most elections conducted by the Michigan Employment Relations Commission are the result of an agreement between the petitioning union and the Respondent employer to conduct a MERC supervised election. The agreement relates to the mechanics of the election (i.e. date, time and place) and who is eligible to vote. The consent agreement here was not substantially different.

2.

(a)

In 1981 the Commission issued a decision involving these parties. 1981 MERC Lab Op 777. In that ruling, MERC found that Graduate Student Instructors (then titled "Teaching Assistants") and Graduate Student Staff Assistants were public employees for the purposes of PERA but that Graduate Student Research Assistants ("RA") were not. That decision was not appealed and remained extant. GEO and the University have engaged in collective bargaining now for three decades for a unit which includes Graduate Student Instructors and Graduate Student Staff Assistants.

(b)

A lot changed in the 30 years that has elapsed between the 1981 ruling and the filing of this petition. The role of research at the University of Michigan has shifted; it is now the central focus of the University with more than a billion dollars expended annually. The number of Research Assistants has increased exponentially; there were some 340 in 1981; there are more than 2,200 now.

The University has also changed its relationship with Research Assistants; it now considers them employees and relates to them as employees. Research Assistants are required

to comply with statutes applicable only to employees. For example, Research Assistants are required to execute the statutory oath required of all public employees to support the Constitution of the United States (http://spg.umich.edu/pdf/201.17.pdf). Graduate Student Research Assistants are provided rights under statutes available only to employees; for example Research Assistants are eligible for leave under the Family Medical Leave Act if they meet the hours worked requirements of the statute (http://www.hr.umich.edu/acadhr/grads/gsra/benefits.html#vacation).

Based upon these facts, GEO and the University prepared and submitted to MERC a consent election agreement and anticipated that the Commission would approve it.

3.

On September 12, 2011, MERC refused to order an election based on the consent. It did not make any findings of fact or reach any conclusion of law. Rather, it stated that it did not have a sufficient factual basis to determine that the Commission should disregard its 1981 decision. Further, the Commission noted that the parties could not vest the Commission with jurisdiction by agreement.

On October 3, 2011, GEO submitted a request for reconsideration of the Commission's order. In that motion, GEO provided the Commission with an extensive affidavit which provided facts showing that Research Assistants were, indeed, employees. On December 16, 2011, MERC granted the Union's motion. It found that the Union had provided an adequate basis on which to conduct a further inquiry into the employment status of Research Assistants. It ordered a hearing on the merits.

B.

On November 30, 2011, the Attorney General sought to intervene in the proceedings pending before the Commission. As the Commission noted, "...(T)he Attorney General is not seeking to intervene in order to advocate for the interest of a State agency. Rather, the Attorney General seeks intervention for the purpose of opposing a policy decision made by the Board of Regents of the University of Michigan, an autonomous State institution."

The Attorney General's motion made the same arguments submitted here: that the Attorney General is entitled to participate; that the Attorney General is authorized to determine what is best for the University of Michigan; that MERC has no authority to refuse the request to intervene. MERC rejected these assertions. It found that the Attorney General did not have an absolute right to participate in a representation case; that intervention would not serve a legitimate purpose under PERA; that the opinions of persons other than the actual parties to the proposed election were not helpful in determining what rights were available under the statute.

Argument

I. The Court of Appeals Did Not Err

A.

1.

The Court of Appeals correctly determined that it did not have jurisdiction to consider an interlocutory appeal from MERC in a representation proceeding. MCR 7.203(B)(3) was modified from its predecessor, GCR 1963 806.2 which stated that "The Court of Appeals may grant leave to appeal from...(2) Final *or interlocutory* judgments or orders of administrative agencies or tribunals which by law are appealable to the Court of Appeals or the Supreme Court." The current rule makes clear that this Court may not consider interlocutory appeals from administrative agencies.

> (B) Appeal by Leave. The court may grant leave to appeal from...(3) a *final order* of an administrative agency or tribunal which by law is appealable to or reviewable by the Court of Appeals or the Supreme Court."

The express language of the court rule precludes appellate review of an interim order.

2.

The Attorney General ignores the plain language of MCR 7.203 and relies instead on section 101 of the Administrative Procedures Act, MCL 24.301. That provision does not apply here. The statute states:

> "When a person has exhausted all administrative remedies available within an agency, and is aggrieved by a final decision or order in a *contested case*, whether such decision or order is affirmative or negative in form, the decision or order is subject to direct review by the courts *as provided by law*."Exhaustion of administrative remedies does not require the filing of a motion or application for rehearing or reconsideration unless the agency rules require the filing before judicial review is sought. A preliminary, procedural or intermediate agency action or ruling is not immediately reviewable, except that the court may grant

> leave for review of such action if review of the agency's final decision or order would not provide an adequate remedy.

The Court of Appeals correctly determined that this provision does not apply in this instance. It was right.

The proceeding pending before the Michigan Employment Relations Commission is not a "contested case." A contested case is:

> (3) "Contested case" means a proceeding, including rate-making, price-fixing, and licensing, in which a *determination of the legal rights, duties, or privileges of a named party is required by law* to be made by an agency after an opportunity for an evidentiary hearing. When a hearing is held before an agency and an appeal from its decision is taken to another agency, the hearing and the appeal are considered a continuous proceeding as though before a single agency."

The proceeding before the MERC ALJ is a contested case and does not determine the legal rights of a party nor is it required by law. First, the matter is a representation case, not a unfair labor practice charge. A representation proceeding is purely investigative and not adversarial. Second, the rights of parties are well known. Only certain facts are uncertain.

The proceeding scheduled before a MERC Administrative Law Judge is not a "contested case." The primary purpose of a representation case is to determine the make up of a proposed bargaining unit. In most election proceedings, no hearing is conducted; the parties agree on the bargaining unit

A representation matter is an investigation. Parties are not considered adversaries. Rather, the hearing is a factfinding process. As a result, a hearing is not always required in representation proceedings. *A H S Community Services, Inc and Michigan Department of Mental Health,* 7 MPER ¶ 25121 (1994) (Indeed, this case sought to proceed without a hearing and the parties each suggest that a hearing is not required.).

"As a first step in clarifying and applying these concepts we begin with the premise, fundamental to proceedings under both PERA and. the Labor Mediation Act, *that representation proceedings are investigatory and not contested or adversary proceedings*." *University of Michigan*, 1970 MERC Lab Op 754

The Court of Appeals correctly determined that MCL 24.301 did not apply here because that provision applies only in contested cases.

3.

The Attorney General engages in a major distortion of the statute by suggesting that MCL 24.301 is not one concept but two. He asserts that the Legislature really meant that interlocutory appeals could be lodged in any type of administrative proceeding. This makes a mockery of the provision.

Section 101 of the statute has to be read as a whole and not a disparate parts. The first sentence describes the circumstances in which the clause applies: ""When a person has exhausted all administrative remedies available within an agency, and is aggrieved by a final decision or order in a contested case..." Despite this, the Attorney General claims that the last sentence provides a stand-alone remedy. In short, The Attorney General says that the clause applies to contested cases except where it does not. With respect, that contention is absurd.

MCL 24.301 applies only to contested cases. The proceeding before MERC is not a contested case. Hence, the right of interlocutory appeal does not apply.

4.

The Administrative Procedures Act does not supercede the Court Rules. MCR 7.203(3) could not be more specific. Interlocutory appeals to the Court of Appeals from administrative

agencies are not permitted; the Court of Appeals does not have jurisdiction to grant leave to appeal. Even if MCL 24.301 applied here, it would only apply to matters appealable to the Circuit Courts. MCR 7.203 was intended to limit the jurisdiction of the Court of Appeals and does so. Therefore, MCL 24.301 is not applicable with regard to appeals to the Court of Appeals. The Court of Appeals correctly determined that it lacked jurisdiction to consider the application for leave to appeal.

B. Interlocutory Appeals From MERC Are Not Permitted

There is excellent policy behind a rule prohibiting interlocutory appeals from MERC. That agency makes frequent intermediate determinations regarding a variety of matters. These range across the broad scope of its jurisdiction and include decisions regarding mediation of labor disputes (MCL 423.207), administration of fact finding (MCL 423.25), consideration of motions prior to and during a hearing on a charge claiming a violation of the Act (R423.161 *et seq*.). Permitting interlocutory appeals would invite chaos. It would give any party the opportunity to cause incredible mischief, disrupting an orderly process and causing both expense and delay. Modification of GCR 806.2 was the result of the problems noted in e.g. *Harper Hosp Emples Union Local No 1 v Harper Hosp*, 25 Mich App 662, 665 (1970) (Interlocutory orders, while not generally reviewable when made, are reviewable once the agency issues its final order in an appeal on the merits of that order.). As noted in *Harper Hospital*, appeals from MERC are set by statute. And the statute expressly precludes interlocutory review of an order issued by the Commission.

MCR 7.203 governs this Court's consideration of this appeal. As such, the Court lacks jurisdiction here. The application should be dismissed for lack of jurisdiction.

II. The Application Is Without Merit

The application for leave to appeal is without merit because the Attorney General cannot demonstrate that he has some reasonable chance of success. The Michigan Employment Relations Commission did not err in denying the Attorney General the right to intervene; that decision is not erroneous as a matter of law nor is it outside the Commission's discretion.

A. The Right of the Attorney General to Intervene Is Not Absolute

1.

(a)

The right of the AG to intervene is broad but not unlimited:

"We recognize that the Attorney General's statutory discretion to intervene in cases "is not unlimited." *In re Intervention of Attorney Gen,* 326 Mich 213, 217; 40 NW2d 124 (1949). Indeed, "[c]ourts acting within their inherent powers of judicial control . . . may restrain the intervention of the attorney general" when there is a showing that such intervention would be "clearly inimical to the public interest . . . ." *Id*. *People v Unger*, 278 Mich App 210, 260-261 (2008)

(b)

MCL 14.101 grants authorization to the AG to "...intervene in any action heretofore or hereafter commenced *in any court* of the state whenever such intervention is necessary in order to protect any right or interest of the state, or of the people of the state." MCL 14.28 is broader and states "...and may, when in his own judgment the interests of the state require it, intervene in and appear for the people of this state in any other court or tribunal, in any cause or matter, civil or criminal, in which the people of this state may be a party or interested."

MCL 14.101 is specific; it limits the right of the AG to intervene in matters pending in the courts, only. MCL 14.28 contradicts that provision, permitting intervention in any "tribunal." It is axiomatic that when statutes conflict, the specific provision overtakes the general. "As a general rule of statutory construction, when statutes or provisions conflict, and one is specific to the subject matter while the other is only generally applicable, the specific statute prevails." Citations omitted. *People v Smith*, 282 Mich App 191, 203 (2009). Because MCL 14.101 is specific while 14.28 is general, the Court should conclude that the AG has no statutory right to intervene in a proceeding pending before it of any type as MERC is not a "court of this state."

2.

(a)

Recognizing some disparity in authority on the subject, in *AG v PSC*, 243 Mich App 487 (2000), this Court confirmed the right of the AG to participate in "administrative proceedings against state agencies." So the AG may participate in proceedings before the Liquor Control Commission or the Public Service Commission. No case has ever held that the AG may participate in a proceeding before the Michigan Employment Relations Commission (except as counsel for a party. See, *e.g. Department of Mental Health* 11 MPER ¶ 29008).

(b)

Assuming, generally, that the AG may participate in proceedings before the Commission does not end the discussion. MCL 14.101–the only statute on which the AG can rely here (14.28 limits intervention to the courts)–also limits intervention to "actions." *A representation proceeding is not an "action*." It is a fact finding process in which MERC

determines if an election is requested, is supported by the requisite showing of interest and whether there is a community of interest in the proposed unit.

A representation proceeding is not a contested case. Unlike a hearing on a unfair labor practice charge (which is adversarial and is a contested case), an "R" case is a factfinding process in which a hearing is not always required. *A H S Community Services, Inc and Michigan Department of Mental Health*, 7 MPER ¶ 25121 (1994) (Indeed, this case sought to proceed without a hearing and the parties each suggest that a hearing is not required.). Even a broad reading of MCL 14.101 restricts the AG to participate in "actions." This is not an action. It is an administrative process. Hence, the statutes on which the AG relies do not apply. The AG has no right to participate in an the representation case. MERC was right to reject the application to intervene.

B. The AG Lacks Standing

1.

The AG is required to have standing as a condition of intervention. The AG cannot participate in a matter out of whim; he must meet the same standing and "case in controversy" obligations imposed on the parties:

> "We are of the opinion that the statutory right of the attorney general to intervene in any action in which the State is interested (1 Comp. Laws 1929, § 187) does not give the State any greater or different rights than are possessed by a private party who intervenes as a litigant in a case of this character. It may be noted that it is not contended otherwise in the attorney general's brief; but the question is raised in an objection filed in behalf of the State to the order of the trial judge for the issuance of the writ."

John Wittbold & Co. v Ferndale, 281 Mich 503 (1937). [Emphasis added]

In *Federated Ins Co v Oakland County Rd Comm'n*, 475 Mich 286 (2006) the AG sought to intervene in the Supreme Court when neither of the parties had, themselves, sought leave to appeal. Rejecting the assertion that his right to intervene was, essentially absolute, the Court stated that:

> "At issue in this case is whether the Attorney General can appeal as an intervenor in this Court on behalf of the people and a state agency when the named losing parties did not themselves seek review in this Court. Notwithstanding the Attorney General's broad statutory authority to intervene in cases, we hold that to pursue such an appeal as an intervenor there must be a justiciable controversy, which in this case requires an appeal by an 'aggrieved party.' Because neither of the losing parties below filed a timely appeal, and because the Attorney General does not represent an aggrieved party for purposes of this case, there is no longer a justiciable controversy. Under such circumstances, the Attorney General may not independently appeal the Court of Appeals judgment. We therefore dismiss this appeal."

[Emphasis added]

In *Federated,* the AG lacked standing because neither party–the actual "aggrieved parties"–had sought leave to appeal to the Supreme Court. In dismissing the intervention by the AG, the Court made clear that the AG does not have the right to participate in a matter simply it interests him. Rather, he must have standing and there must be a justiciable controversy. *Id*., 292. See also *Mich Educ Ass'n v Superintendent of Pub Instruction*, 272 Mich App 1, 9-10 (2006) (To the extent one might read MCL 14.101 or MCL 14.28 as allowing the Attorney General to prosecute an appeal from a lower court ruling without the losing party below also appealing, and without the Attorney General himself being or representing an aggrieved party, the statutes would exceed the Legislature's authority because, except where expressly provided, this Court is not constitutionally authorized to hear nonjusticiable controversies).

Neither of the actual parties to the MERC proceeding has sought to appeal the Commission decision. Hence, this situation is identical to that in *Federated*. The Attorney General lacks standing.

2.

(a)

The Attorney General also lacks standing because his filing was not supported by a "showing of interest." In representation cases, intervention is allowed only when a party seeks to represent a group which wishes to be placed on the election ballot. R423.145(3) states, in pertinent part that "An employee, group of employees, individual, or labor organization which makes a showing of interest not less than 10% of the employees within the unit claimed to be appropriate may intervene in the proceedings and attend and participate in all conferences and any hearing that may be held." The rule does not permit an individual, without support, to participate in the proceeding. An individual may request to intervene only if the request is supported by at least 10% of the proposed bargaining unit and that person represents those persons.

See also *Township of Redford* 6 MPER ¶ 15099 (1984) (in absence of special circumstances, intervention in representation proceeding will be permitted only when appropriate showing of interest is established either prior to or at time of hearing.). A party without standing may not intervene in a MERC proceeding. *City of Detroit Fire Department*, 9 MPER ¶ 27011 (1995) (As an individual employee and member of the bargaining unit, it is clear that Charging Party has no standing in the first place to raise such issues, since the

bargaining obligation under PERA is owed by the collective bargaining representative to the employer and vice versa, and not to individual employees.)

The AG does not proffer a showing of interest. He purports to represent himself. Individuals may not interfere with representation proceedings without a showing of interest. Hence, the AG lacks standing for lack of showing of interest.

(b)

The AG also lacks standing because the persons whose interest he allegedly advocates (executives and "no voters") lack standing in a representation proceeding.

This is a representation case. As such, there are two parties–an employer and a petitioning labor organization. Those are the sole participants.

The AG purports to represent persons who would have no legal interest in the proceedings were they to appear in person. First, the AG claims that the view of executives (Deans) should be heard. Second, he claims that the view of "no voters" should be heard. Neither view would be relevant were it offered. The sole question in a unit dispute is "community of interest" and the make up of the proposed bargaining unit. Individual members of the proposed bargaining unit cannot argue that there should not be an election (although they can advocate their views to other employees). Executives cannot be heard at all; MCL 423.210(a) prohibits representatives of an employer from interfering with the exercise of rights under PERA. The views of supervisors are not relevant in a representation matter. Hence, the AG lacks standing because the persons he purports to represent would not have standing.

C. Permitting Intervention Would Cause Chaos

The motion here is submitted by the Attorney General but, if granted, would open the possibility of other persons intervening in this or other representation cases without a showing of interest. The AG asserts that he wants to present argument on behalf of persons opposed to collective bargaining for Research Assistants. Granting this request would open the door to others; similar objections raised by parties without a showing of interest.

There are nay-sayers in every representation case. Individuals may object to the unit description, the inclusion of some jobs and exclusion of others. Some individuals who oppose any public employees being represented for collective bargaining may object merely to the holding of an election. Allowing such persons to participate as parties would turn factfinding proceedings into platforms for airing of polemics. It would open the door to the sharing of every view no matter how irrelevant or how obstructionist.

PERA guarantees public employees the right to organize and bargain collectively. MCL 423.209. Interlopers in a representation process would be able to so contaminate proceedings, so delay and obstruct proceedings, that this statutory right could be rendered nugatory by a single intransigent person. Intervention without a showing of interest is prohibited for that very reason. This situation is no different.

II. There Is No Irreparable Injury

The Attorney General has failed to demonstrate any basis for a stay of proceedings. He engages in mere speculation about the proceedings before MERC and is unable to provide any evidence which, if true, suggests that anyone will suffer an irreparable injury as a consequence of continuing the proceeding.

A. Speculation about the Trial

The Attorney General speculates on the nature of the trial before the Administrative Law Judge. His contention is not just wrong; it is completely devoid of factual support.

1.

In granting the GEO motion for reconsideration, the Michigan Employment Relations Commission directed that the hearing process before the Administrative Law Judge be complete and comprehensive. The order states in part:

> "The motion for reconsideration is granted, the petition for a representation election filed by the Graduate Employees Organization/AFT, is reinstated, and this matter is referred to a senior administrative law judge for an expedited evidentiary hearing. At such hearing, the petitioner shall have the burden of proving, by substantial, competent evidence, such material change of circumstances since the decision in Regents of the University of Michigan, 1981MERC Lab Op 777, as to warrant a finding that some or all of the Graduate Student Research assistants are employees of the University of Michigan and are entitled to the protection and benefits of the Public Employment Relations Act. The Commission will require competent proofs to each category of employee to show that the facts are different from our previous decision."

Slip op., 7.

The Attorney General seems to think that the parties will somehow so distort the record that a fantasy will be spun rather than facts. This ignores the very clear directive issued by the Commission to the Administrative Law Judge. The Commission order gives the ALJ authority to, on her own motion, secure evidence including compelling testimony of witnesses. This process will not be a charade; it will be a reasonable inquiry into the facts. Any other suggestion is complete conjecture.

2.

Speculation will not support a request for extraordinary relief. The Attorney General is seeking what amounts to an injunction. As such, he has to demonstrate real, not imagined , irreparable injury. *Pontiac Fire Fighters Union Local 376 v City of Pontiac*, 482 Mich 1, 11 (2008) (Speculation about harm caused by layoffs insufficient to justify injunction).

The Attorney General has no evidence–because there is none–that the trial before the ALJ will be anything other than a fruitful investigation into the facts. As such, his demand to participate is without merit.

B. Speculation about Collective Bargaining

The Attorney General speculates about the impact of collective bargaining by Research Assistants. Nothing other than anti-union bias supports such a canard.

First, the Attorney General cites to nothing–no study, no opinion–to support his contention that collective bargaining for RA will somehow compromise the excellence of the University of Michigan. This assertion is devoid of intellectual support. And it is utterly false.

Second, collective bargaining for Research Assistants will be a mutual process between GEO and the University in which the "educational sphere" will be respected. See *Central Michigan University Faculty Association v Central Michigan University* 404 Mich 268 (1978).

Finally, the impact of collective bargaining is not relevant to the question of whether public employees may bargain. That right is created by statute and "adverse impact" is not a basis to deny it. Nothing supports the wild claims made by the Attorney General. Therefore there is no factual basis for a claim that his intervention is necessary to prevent harm.

III. Intervention Compromises the Constitutional Authority of the University Regents

The premise of the Attorney General's motion to intervene is that the University of Michigan is not capable of governing itself. The AG asserts that there are those who disagree

with the policy adopted by the University Regents. That claim presupposes that the Regents are not authorized to make such policy; that whenever someone disagrees with policy the AG, or someone else, may challenge the Regents' decisions.

The Constitution grants to the Regents the sole authority to govern the University:

> "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 trustees of Michigan State University and their successors in office shall constitute a body corporate known as the Board of Trustees of Michigan State University; the governors of Wayne State University and their successors in office shall constitute a body corporate known as the Board of Governors of Wayne State University. Each board shall have general supervision of its institution and the control and direction of all expenditures from the institution's funds. Each 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 of each institution 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."

Const Art VIII, § 5

For reasons known only to him, the AG has decided that the actions of the Regents are unacceptable; that they are not to be trusted in assessing the nature of the work performed by their employees. However, the Constitution vests in the Regents the authority to determine policy for the University. No third party can seek to substitute their judgment for that of the Regents.

The Attorney General may somehow believe that collective bargaining for Research Assistants is not a good idea. But that decision does not belong to him. He seeks to invade the unique and exclusive authority of the Regents to the "general supervision" of the University.

The motion by the AG seeks to exercise authority that is granted exclusively to the Regents pursuant to Article VIII, section 5 of the Constitution.

IV. A Stay Is Contrary to Public Policy

The request for stay is contrary to public policy because it will interfere with the right of public employees to a prompt election. Granting a stay of the hearing will defer the inquiry ordered by MERC; the delay–while this matter is considered–will be extensive. The result is that public employees will be deprived of a right to vote although that right is guaranteed by section 9 of PERA, MCL 423.209.

The public interest is served by conducting a prompt, free and fair election. A stay will be destructive to that right.

Conclusion

The premise on which the Attorney General proceeds is that (a) the University of Michigan should oppose the election but is not; (b) people opposed to collective bargaining will not be heard. Neither premise is relevant; indeed, neither makes sense.

The Attorney General states that "All participants in the process will be advocates for one side, and based upon these participants' previous positions, would assert that the Commission's long-standing decision is now incorrect. While the University, the public employer here, would *ordinarily be expected to oppose that result*, it is constrained from doing so by a decision of a majority of its Regents (with two members dissenting). Attorney General brief, p. 1. emphasis supplied.

It may be a surprise to the Attorney General but not all public employers oppose collective bargaining for their employees. It is the right of each employer–in this case the Regents of the University of Michigan–to determine, for itself, how it will respond to a request to engage in collective bargaining. Yet the Attorney General contends 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" citing MCL 423.1. However, this statute does not apply here.

The referenced clause comes from the Labor Relations and Mediation Act, MCL 423.1, *et seq*., a statute enacted three decades before the Public Employment Relations Act and applicable only in the private sector. See MCL 423.1 (f) ("'Employer'...shall not include...the state or any political subdivision thereof..."). PERA states that the public policy of Michigan is to "...provide for the mediation of grievances and the holding of elections; to declare and

protect the rights and privileges of public employees....” The statute then declares those rights to be to “...organize together or to form, join or assist in labor organizations, to engage in lawful concerted activities for the purpose of collective negotiation or bargaining or other mutual aid and protection, or to negotiate or bargain collectively with their public employers through representatives of their own free choice.”

This is the law applicable here. This is the law that the Michigan Employment Relations Commission will apply. And this is why the Attorney General has no role in this process. His effort is designed to interfere with, rather than support, a statutory process.

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The Court of Appeals lacked jurisdiction. The Attorney General lacks standing. The Attorney General lacks a factual basis for a request for stay. This application should be denied.

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon Christine Gerdes at the University of Michigan, 503 Thompson St # 5010, Fleming Admin Bldg., Ann Arbor, Michigan 48109;David Fink at David Fink & Associates, 100 West Long Lake Road, Suite 111, Bloomfield Hills, Michigan 48304; Kevin J. Cox, at the Michigan Dept. of Attorney General, 3090 W. Grand Boulevard, Detroit, Michigan 48202 by

Jill M. Lowing