

# Law Barring U. Of Mich. Research Assistant Union Nixed

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By **Ben James**

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Law360, New York (February 07, 2014, 9:28 PM ET) -- A Michigan federal judge ruled Wednesday that the enactment of a state law barring graduate research assistants at public universities from unionizing violated a clause in the state constitution that guards against “surreptitious legislative activity,” handing a win to University of Michigan assistants looking to organize.

U.S. District Judge Mark Goldsmith sided with the Graduate Employees Organization in a challenge to Michigan's Public Act 45 on 2012, which effectively blocked the state's employment relations commission from moving ahead with a hearing about whether graduate research assistants at the University of Michigan should be recognized as public employees with collective bargaining rights.

Among the plaintiffs' arguments was the manner in which Michigan lawmakers passed PA 45 violated part of the state constitution that contains a “change-of-purpose” clause, which the court said served as a “bulwark against hasty and surreptitious legislative activity.”

HB 4246, the bill that eventually became PA 45, didn't have anything to do with the definition of who was a public employee, but rather aimed to empower emergency managers to do away with or modify collective bargaining pacts at the local and school district level, according to Judge Goldsmith.

“By importing language from another bill, the Legislature reincarnated HB 4246 as the legislative vehicle to prevent a particular group of employees from qualifying as public employees at the university level — a subject that has nothing to do with an emergency manager’s powers in the local government and school district context,” the decision said, concluding that PA 45 was invalid because it had been enacted in violation of the Michigan Constitution.

The roots of the current battle stretch back to 1981, when the Michigan Employment Relations Commission held that while teaching assistants and staff assistants were public employees under the Public Employment Relations Act — and thus had collective bargaining rights — graduate student research assistants didn't count as public

employees.

In 2011, however, the University of Michigan adopted a resolution backing research assistants' efforts to organize and recognizing them as public employees, said the ruling. The Graduate Employees Organization petitioned MERC to reverse its 1981 finding that research assistants weren't public employees, and MERC denied that petition.

After the GEO sought reconsideration, MERC told an administrative law judge to hold hearings of whether things had changed regarding research assistants status and whether MERC should reverse its position.

The Michigan attorney general, who unsuccessfully tried to intervene in the CEO's reconsideration bid, filed a challenge to with intermediate appeals court and then the Michigan Supreme Court, but to no avail.

However, MERC ended up suspending its review because the state's Legislature passed PA 45, which expressly excluded graduate student research assistants from collective bargaining.

The GEO and Christie Thoth filed their challenge to PA 45 in April 2012, and the Board of Regents of the University of Michigan filed an intervenor complaint soon after. Both took aim at MERC members and leveled claims invoking the equal protection clause of the U.S. Constitution's Fourteenth Amendment, as well as claims under the Michigan Constitution.

Wednesday's ruling said that because the state constitution claims alleging a violation of the change of purpose clause were "dispositive" and thus refrained from ruling on the equal protection claims under the U.S. Constitution.

Judge Goldsmith instructed the parties to file memoranda on what further actions were required in the case.

David Hecker, president of the American Federation of Teachers' Michigan arm, said Friday that the way the law was "rammed through" was unconstitutional, and that the law had been quickly enacted because 2,200 research assistants were poised to unionize.

"We are extremely pleased with the decision," Hecker said.

“The ruling is under review, and we are considering our next steps,” Joy Yearout, a spokeswoman for Michigan Attorney General William Schuette, said.

Toth and the GEO are represented in this matter by Mark Cousens of Mark H. Cousens Association. The university is represented by David Fink of Fink & Associates.

The case is Toth et al. v. Callaghan et al., case number [4:12-cv-11700](#) in the U.S. District Court for the Eastern District of Michigan.

--Editing by Chris Yates.