

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW**

BOARD OF REGENTS OF THE
UNIVERSITY OF MICHIGAN,

Plaintiff,

v

Case No: _____

THE GRADUATE EMPLOYEES ORGANIZATION
AMERICAN FEDERATION OF
TEACHERS LOCAL 3550,

Hon. _____

Defendant.

BUTZEL LONG, a professional corporation

By: Craig S. Schwartz (P36137)

Daniel B. Tukel (P34978)

Sarah L. Nirenberg (P77560)

Attorneys for Plaintiff

41000 Woodward Avenue

Stoneridge West

Bloomfield Hills, Michigan 48304

248-258-2507

Fax: 248-258-1439

Schwartz@butzel.com

tukel@butzel.com

nirenbergs@butzel.com

**THE BOARD OF REGENTS OF THE UNIVERSITY OF MICHIGAN'S
MOTION FOR TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

The Board of Regents of the University of Michigan (“University”), by its counsel, Butzel Long, a professional corporation, moves this Court pursuant to MCR 3.310 and MCL § 423.216(h) to issue a Temporary Restraining Order and a Preliminary Injunction enjoining Defendant Graduate Employees Organization (“GEO”) from unlawfully striking and from encouraging, inducing, or persuading employees of the University to unlawfully strike. The University’s Motion is based

on its Verified Complaint, attached Exhibits, as well as the accompanying Brief.

WHEREFORE, the University requests that the Court issue a Temporary Restraining Order and Preliminary Injunction as prayed in the Verified Complaint, the accompanying brief, and the attached exhibits.

**BRIEF IN SUPPORT OF
THE BOARD OF REGENTS OF THE UNIVERSITY OF MICHIGAN'S
MOTION FOR TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

INTRODUCTION

Plaintiff, the Board of Regents of the University of Michigan (“University”), has brought this action seeking an immediate temporary restraining order and permanent injunctive relief to halt an admittedly unlawful strike by the Graduate Student Instructors and Graduate Student Staff Assistants through their union, the Graduate Employees Organization (“GEO”). Unlike most cases, which may require significant analysis to determine whether a union’s strike is unlawful, GEO here has communicated and admitted to its members that its strike is indeed unlawful. Further, GEO’s strike constitutes an unfair labor practice, for which the University has filed an unfair labor practice charge with the Michigan Employment Relations Commission (MERC). And the strike has by GEO’s own admission, and design, disrupted the University’s ability to deliver undergraduate education—a core mission of the University. For these reasons, the University moves for a Temporary Restraining Order and a Preliminary Injunction in order to avert further irreparable harm to the University, its student body, their parents, and the general public.

FACTUAL BACKGROUND¹

I. The parties negotiate and finalize a collective bargaining agreement.

The University of Michigan provides higher education to approximately 45,000 students. Many of these students are taught by graduate student assistants, known as Graduate Student Instructors (“GSIs”) or Graduate Student Staff Assistants (“GSSAs”). The University employs approximately 1,800 Graduate Student Instructors, who teach more than 3,400 distinct class sections. **Compl Exhibit. 2, A. Dittmar Aff ¶ 3.** Approximately 90% of University’s undergraduate students are enrolled in at least one course that is either taught or co-taught by a GSI or GSSA. The GSIs and GSSAs are represented for purposes of collective bargaining by the Graduate Employees Organization (“GEO”) and recently entered into a new collective bargaining agreement (“CBA”) with the University with a term of April 16, 2020 – May 1, 2023. **Compl Exhibit 1, CBA.**

While the collective bargaining agreement was being negotiated, GEO made several bargaining proposals unrelated to the terms and conditions of employment of bargaining unit members. **Exhibit 1, E. Grachek Aff ¶ 4.** For example, these proposals, raised in January 2020, included the following:

- The University must provide “Access to a Disarmed and Demilitarized Workplace” by removing and prohibiting “lethal weapons,” including guns, pepper spray, and Tasers from campus; cease “police-military collaboration of any kind,” including transferring/sharing equipment, information, and facilities; notifying GEO 30-days in advance of the acquisition and installation of surveillance equipment in the workplace, streets and sidewalks; creating campus-wide standards and establishing a committee to promote accountability in law enforcement; conducting independent investigations unaffiliated with law enforcement; providing an annual report of all “stops”; requiring all current and new officers to undergo implicit bias training and additional testing; establishing crisis management teams; and notifying employees of any additional police presence on campus. *Id.* at ¶ 4a & Ex. A, Section R. Access to a Disarmed and Demilitarized Workplace

¹ All of the following facts are supported by the Verified Complaints and the Affidavit attached to Plaintiff’s Motion as **Exhibits 1 through 4.**

- The University must create a Campus Planning Committee to advise the President on campus planning and development; commit \$10 million per year to the City of Ann Arbor's Affordable Housing Trust Fund and \$5 million per year to the City of Ypsilanti's Affordable Housing Fund. *Id.* at ¶ 4b & Ex. B, MOU XVI: Tenants' Union; Ex. C, MOU XV: Affordable Housing

The University advised GEO that these were inappropriate bargaining topics, as they do not relate to bargaining unit employment, GEO withdrew the proposals and executed the final CBA. *Id.* at ¶ 5 & Ex D, Withdrawal of MOUs. . The final, executed CBA includes increases of 3.0% (year one), 3.4% (year two) and 3.7% (year three). These raises were promised after the onset of COVID and at a time when others at the University were being furloughed or told they would receive no salary increases. In addition, GEO members receive a stipend that is the equivalent of \$32.35 per hour and a full tuition waiver if they work 7.5 hours or more per week. GEO members also receive fully paid health care without the co-premiums that other University employees pay. *Id.* at ¶ 6. The final CBA also included a broad and stringent no-strike commitment by GEO, providing, in pertinent part:

Article III: No Interference

The Union, through its officials, will not cause, instigate, support or encourage, nor shall any Employee take part in, any concerted action against or any concerted interference with the operation of the University, such as the failure to report for duty, the absence from one's position, the stoppage of work, or the failure, in whole or part, to fully, faithfully, and properly perform the duties of employment. Nothing in this paragraph, however, shall be construed to limit participation of individuals in an activity that is unrelated to their employment relationship. In the event of any such action or interference and on notice from the University, the Union, through its officials, will immediately disavow such action or interference. Further, the Union will instruct in writing (email will suffice) and in a timely matter (e.g., prior to the action or interference when notice from the University is provided prior to the interference) any and all Employees to cease their misconduct and inform them that this misconduct is a violation of the Agreement, which subjects them to disciplinary action, including discharge.

Compl Exhibit 1, pp. 7.

The CBA also contained what is commonly known as a “zipper clause,” as enumerated in Article XXIV “Waiver.” This clause expressly waives the obligation of either party to bargain collectively during the term of the CBA, particularly with regard to matters actually negotiated at the bargaining table, and provide as follows:

Article XXIV: Waiver

The University and the Union acknowledge that during the negotiations which resulted in this Agreement each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement.

Therefore, the University and the Union, except as provided in Article XXVI, Term of Agreement, each voluntarily and unqualifiedly waives the right, and agrees the other shall not be obliged, to bargain collectively with respect to any subject or matter referred to or covered in this Agreement, or with respect to any subject or matter not specifically referred to or covered in this Agreement, even though such subject or matter may not have been within the knowledge or contemplation of either or both parties at the time that they negotiated or signed this Agreement.

Id. at pp. 98.

II. GEO resurrects non-mandatory bargaining subjects, which it is now striking over.

Despite having withdrawn certain bargaining proposals to reach a contract, starting in July 2020, GEO resurrected them by demanding mid-contract term bargaining under the auspices of responding to a pandemic and national crisis. **Exhibit 1, E. Gracheck Aff ¶ 7 & Ex. E, New MOUs.** On September 4, 2020, GEO summarized these proposals, posting them as demands on their website. They include the following non-mandatory and/or illegal subjects of bargaining regarding police and additional benefits for individuals who are not in the bargaining unit and are not even University employees:

- A defunding of the University’s Division of Public Safety, involving a reduction of 50% of their annual budget and a reallocation of the funds to “community based justice initiatives.”
- A demand that the University of Michigan “cut all ties” with police, including the Ann Arbor Police Department, and the Immigration and Customs Enforcement Agency of the United States government.
- “Demilitarization” of University Public Safety employees, including the prohibition of the use of “lethal weapons,” elimination of military funding, force standards for campus policing, and transparency around the use of surveillance technology.
- No retaliation against anyone (regardless of whether they are University employees and within the bargaining unit) who claims to be unable to work due to police presence.
- Additional support for international students (regardless of whether they are University employees and within the bargaining unit) and repeal of a \$500 international student fee and document shipping fee. (GSIs and GSSAs do not pay this fee, per the Article XX of the parties’ Agreement.)
- Certain benefits for graduate students who are not University employees or bargaining unit members, including
 - extensions to degree timelines and funding;
 - a \$2,500 unconditional emergency grant;
 - rent freezes and flexible leases for on-campus housing and a promise to exert pressure on local landlords to extend the desired UM rent freeze across Ann Arbor.

Compl Exhibit 2, GEO’s Demands for A Safe and Just Pandemic Response for All

GEO made other demands, claiming that such were necessary to protect bargaining unit employees from the risks of COVID-19 exposure. However, in the new labor contract, the parties had already agreed to language in Article XXI, providing “No Employee will be required to act, nor will any Employee act, in a manner which constitutes a health or safety hazard in their employment relationship.” Compl Ex 1, pp. 86. Despite this clear contract language providing GEO a path to address and grieve alleged unsafe working conditions, GEO never used the grievance and arbitration procedures to address its purported COVID-19 safety concerns. **Exhibit 1, E. Grachek**

Aff ¶ 12.

III. GEO unlawfully strikes, causing irreparable harm to the University, its student body, their parents, and the public in general.

On Monday, September 7, 2020, GEO repudiated the no strike provisions by authorizing, planning, and implementing a strike to begin on September 8, 2020. **Exhibit 2, GEO Statement following Work Stoppage Ballot Results.** In an announcement of the strike, GEO admitted that “this spring, we demanded disarming and demilitarizing campus police,” but that the topic was dropped when the University took a different position and the parties finalized the collective bargaining agreement. *Id.* GEO continued to unlawfully encourage, authorize, and organize an illegal work stoppage through its website and Twitter page and by distributing memoranda directly to its members and those impacted through Google Docs announcing the start of the strike, setting up in-person and virtual picketing shifts, issuing FAQs for in-person picketing, providing a template letter advising students that they have canceled class, and explaining how unaffiliated allies can support GEO’s strike.² And in another Google Doc announcing the strike, GEO further explained what it meant to withhold its labor in a communication directed to undergraduates:

1. *How does this affect you?* In the short term, undergraduates would not have access to their GSIs during the strike. *This means no one to answer their questions about assignments, no one to lead their discussion sections, and no one to grade their papers.* However, when it comes to the big picture, the best thing for undergraduate learning is for them to have GSIs who are fighting for the safety of their students and the whole campus community. While you might not have the assistance of your GSIs for your courses, you have the opportunity to stand with them against bureaucratic cruelty and to stand up for everyone in our communities.
Exhibit 10, GEO Strike Key Issues (emphasis added).

² **Exhibit 3: GEO Is On Strike!; Exhibit 4, GEO Twitter Page; Exhibit 5: In-Person and Virtual Picket Shift Sign-up; Exhibit 6: In-Person Picketing FAQ; Exhibit 7: Template Letter to Students; Exhibit 8: Master Document for GEO Allies; Exhibit 9, FAQ: Recent Emails from U-M Administration.**

GEO here admits to sacrificing undergraduates' education in their purported crusade for the entire campus community, perversely claiming that it is in the students' best interest not to learn, even remotely, but to protest instead.

The GEO also provided literature to members to abate their concerns of retaliation by the University and convince them to participate in the work stoppage. In a warning directed at international graduate students, GEO admitted “[s]triking while our contract is in force is technically ‘illegal’ under Michigan state law.” (emphasis added).³ However, in an effort to lure concerned graduate assistants into what was admittedly an unlawful strike, the GEO flyer went on to say

However, the blame for such an action would be **placed on the Union leadership** (one of whom is actually an international student!). In the unlikely event that UM pursued legal action against individual GEO members—something which has never been done before at any institution and may not be legally possible--this would not amount to a criminal penalty, but to a civil one (similar to a breach of contract, like being evicted, and not a "crime of moral turpitude"), and so it would have **no impact on your current or future immigration status** (whether you are in the US currently or not).
Exhibit 11: Addressing IGSI Concerns about Participating in Work Stoppage.

As promised, starting on Tuesday, September 8, 2020, GEO, its members and agents, and those acting in concert with them, began a strike in violation of Section 2 of the Michigan Public Employment Relations Act, MCL § 423.202 (“PERA”) and in breach of the collective bargaining agreement. Not only has the GEO admitted its strike is unlawful, it has also admitted that the unlawful strike will disproportionately impact undergraduate students, issuing the following message to students:

Make no mistake, these are wild times. No one goes to school expecting their instructors to stop teaching on the second week of class. *GEO understands that our action will have an outsize impact*

³ GSIs have also admitted in an away email message to their undergraduate students that GEO's strike is illegal. **Exhibit 15, GSI Automatic Away Message.**

on undergraduates, so let us be quite clear: we do not relish the disruption to undergraduate education created by our strike.

Exhibit 8: Master Document for GEO Allies (emphasis added).

That the University has issued a statement calling the strike unlawful has only emboldened GEO to continue unlawfully striking despite knowing the significant impact to the University, the student body, their parents, and the general public. As Elliott Brannon, medical school steward of GEO told the press,

(The University) responded pretty quickly by saying that it is illegal and I feel like that makes it seem even more important to us because *we know that striking is illegal in this state...and we're doing that knowing that it's illegal* because this is how important we think it is.

Exhibit 12, Michigan Daily Article 9/8/20 (emphasis added).

Similarly, in a question and answer sheet distributed to its membership, GEO admits, “[i]t is a civil infraction for public sector employees (like GSIs/GSSAs) to strike in the state of Michigan. The most likely people to be impacted by actions taken by UM are GEO officers. UM could get a court order for us to stop striking and if we do not obey it, the coordinators of the job action (the GEO officers) could be placed under arrest...” **Exhibit 9, FAQ: Recent Emails from U-M Administration.** After talks with the University failed on September 9, GEO’s steward for the School of Public Health, Benjamin Brennan, informed members that they would be back on the picket line September 10 to “stri[k]e for Black lives, for police abolition, for a better, safer campus” and encouraging members and their allies to “show up STRONGER than the last two days. Join a picket. Talk to colleagues about withholding labor. Withhold your own labor.” **Exhibit 13, 9/10/20 Email STRIKE CONTINUES!!**

GEO’s unlawful work stoppage and in-person picketing has caused, and if the strike continues, will cause the following irreparable injury to the University, the student body, their parents, and the public in general, which supports and is served by the University:

- Disruption and serious impairment of the vital function of the University of Michigan; namely, the education of approximately 45,000 students;
- Damage to the educational growth and plans of the University of Michigan students, including inability to continue classes with no assurance that it will be possible to effectively make up time lost if the strike continues;
- Increased operating costs and related damages to the University of Michigan if the fall term must be extended or changed, with no legal recourse for damages being available against GEO under the law of the State of Michigan, despite the illegal nature of GEO's conduct;
- Loss of confidence in mission of the University of Michigan on behalf of the students, their parents, and the general public of the State of Michigan if such illegal conduct is allowed to continue;
- Loss of reputation in the quality of public education at the University of Michigan on behalf of the students, their parents, and the general public of the State of Michigan if such illegal conduct is allowed to continue;
- Risk of loss of federal, state and private financial aid and grants due to cancellation of classes;
- Severe prejudice to students in applying for career jobs or graduate programs;
- Potential delay in graduation for both undergraduate and graduate students; and
- Repudiation of the collective bargaining agreement and destruction of the collective bargaining relationship.

Compl Exhibit 4, A. Dittmar Aff ¶¶ 2-12.

In addition, apparently in the name of GEO's strike, some GSIs shut down their students' access to their on-line teaching platform (Canvas), thus effectively locking the students out of all learning. And GEOs picketing blocked the only open entrance to the School of Social Work Building, creating a fire hazard. In fact, these and other disruptions to the University's educational mission are exactly what GEO intends. Thus, one graduate student sent an email across campus on Friday stating that "[w]e will withhold our labor *and disrupt business as usual* until [GEO's] demands are met. **Exhibit 14: 9/11/20 Email from GSI (emphasis added).**

Not only are GEO's members interfering in the University's mission to educate students by unlawfully withholding their labor, they are encouraging impressionable undergraduate students, over whom they exercise significant authority, to forego their education. At the direction of GEO, the GSIs on strike have set up an away email message that is automatically sent in response to any inquiry from an undergraduate and states

I am withholding my labor as a (GSI/GSSA/ graduate student) as part of the Graduate Employees' Organization strike for a safe and just campus. This strike overlaps with and stands in solidarity with the nationwide #ScholarStrike for Black Lives on September 8th & 9th. If you are a faculty member reading this email, we encourage you to cancel your classes for the duration of both strikes. *If you are an undergraduate student, we ask that you do not attend class. Do not cross the picket line - either in-person or digital.*

Exhibit 15, GSI Automatic Away Message and link (emphasis added).

Now in its second week of the unlawful strike, GEO has continued to issue written materials with the following instructions to students:

DIRECT STUDENT ACTION - DON'T CROSS THE PICKET LINE

1. [Join the Picket](#)
2. Don't Cross the Picket line - this means don't go to class. If you are comfortable with this, have conversations with your professors about cancelling classes. Not everyone is going to be able to do this option because of circumstances - don't worry, if you cannot openly stand in solidarity, there are lots of other things that can be done (anonymously!) to support.

Exhibit 16: GEO Message to Students.

These GSIs hold enormous sway over the undergraduate students that they teach. An undergraduate student emailing her instructor for assistance would not only not receive that assistance, she would get a response from the instructor—who will determine her grade—urging her to boycott classes and support the admittedly illegal strike. Given the power differential between the

instructors and their students, such a request is inherently coercive. Undergraduate students may well view themselves as beholden to their instructors and with little choice but to accede to their dictates. The University has made a commitment to all students, their parents, and the general public to educate these students, but is unable to carry out its mission due to GEO's unlawful acts.

The only remedy that will effectively restore the rights of the University of Michigan, its student body, their families, and the general public is an immediate order of this Court prohibiting the admittedly illegal acts of GEO from continuing. The injunctive relief prayed for in the University of Michigan's Motion and in the Verified Complaint will not deprive the GEO or any of its members of any legal right and will in no way cause them any loss, injury or damage.

ARGUMENT

I. The Court should enjoin GEO's unlawful strike.

An injunction is an equitable remedy within the discretion of the courts to grant. In *School District for the City of Holland v. Holland Education Association*, 380 Mich 314, 326 (1968) (referred to as "*Holland Schools*"), the Court stated:

We recognize that great discretion is allowed the Trial Chancellor in the granting or withholding of injunctive relief. Courts sitting in equity have historically analyzed the respective positions of the parties and have weighed the injury which will be suffered by the plaintiff in considering whether an injunction should be granted or withheld.

The award of an injunction enjoining strike activity under similar facts such as these is supported by Michigan law. In *Holland Schools*, the faculty union engaged in a work stoppage in violation of the Public Employment Relations Act ("PERA"), specifically MCL § 423.202. The Circuit Court issued a Temporary Restraining Order enjoining the strike. On appeal, the Michigan Supreme Court held that circuit courts have authority to enforce, by injunction, the provisions of PERA prohibiting strikes by public employees, if the court finds: (1) that the work stoppage is

illegal; and (2) that the work stoppage will result in irreparable injury. See also *Warren Education Association v Adams*, 57 Mich App 496 (1975) (injunction properly issued to halt illegal teachers strike). Here, the University of Michigan satisfies both elements of the injunctive relief standard set forth in *Holland Schools*.

A. GEO's strike is admittedly unlawful.

Because the CBA contains broad and stringent no-strike language agreed to by GEO, the union and its members' actions are unquestionably and in fact admittedly unlawful. The University, its students, their parents where applicable, and the general public will suffer irreparable injury if the unlawful strike is not enjoined. The relief sought by the University of Michigan in these circumstances is warranted, and this Court should enjoin the unlawful strike.

In addition to the strike being in blatant and unambiguously knowing violation of the no-strike clause, GEO's work stoppage/strike, is also unlawful under The Michigan Public Employment Relations Act ("PERA"), which provides in pertinent part that "[a] public employee shall not strike and a public school employer shall not institute a lockout." MCL § 432.202

As employees of the University of Michigan, GSIs and GSSAs, through their union, are public employees within the meaning of the Act. *Board of Control of Eastern Michigan University v. Labor Mediation Board*, 18 Mich. App. 435 (1969) (employees of Eastern Michigan University were public employees covered by the Act); *Regents of the University of Michigan v. Michigan Employment Relations Commission*, 389 Mich. 96 (1973) (interns, residents and post-doctoral fellows who were both employees and students of the University of Michigan were covered by the Act). GEO's work stoppage also constitutes a strike, as defined by PERA as

The concerted failure to report for duty, the willful absence from one's position, the stoppage of work, or the abstinence in whole or in part from the full, faithful, and proper performance of the duties of employment for the purpose of inducing, influencing, or coercing

a change in employment conditions, compensation, or the rights, privileges, or obligations of employment.
MCL § 423.201.

After raising the same demands that it agreed to withdraw during contract negotiations months earlier, and having no success in getting the University to permissive subjects of bargaining, GEO nevertheless unlawfully resurrected those contract demands in furtherance of the strike. This is not in dispute, as the GEO has admitted on its website, social media, and to the press, that the purpose of this work stoppage, while it may be harmful to students, is intended to “induc[e], influenc[e] or coerce a change” in some terms and conditions of their employment.

B. The University, its student body, their parents, and the general public have been and will continue to be irreparably harmed by GEO’s unlawful strike.

In the absence of an injunction preventing GEO and its members from unlawfully striking and encouraging others to do so in support, the University, its student body, their parents, and the general public will be irreparably harmed. In considering whether the injury is irreparable, courts look to the nature of the injury, and consider the following characterization provided in 42 Am Jur 2d, Injunctions, §30:

It is a familiar principal that the remedy [injunction] is available only where the injury is actual or positive and substantial, and is not adequately remediable by law. Equity will not interfere by injunction where the damages suffered by the complainant are so small and the right invaded so unimportant as to make the case a trivial one. Nor will equity interfere to relieve against injuries which are technical or inconsequential, or which are fanciful or sentimental, or which are not of such serious consequences as to warrant judicial investigation. It must be a material and actual injury, existing or presently threatened, and not one that is fanciful, theoretical, or merely possible, or that is doubtful eventful, or contingent.

In other words, an injury is irreparable when it cannot adequately be compensated in damages.

See, e.g., *National Bd of YMCA v Flint YMCA*, 764 F 2d 199, 201 (CA 6, 1985); *Dietrich v Aqua-*

Gold, In., 2007 US Dist LEXIS 76645 (E D Mich, Oct 16, 2007); *Ainsworth v Munoskong Hunting and Fishing Club*, 153 Mich 185, 191 (1908). The injuries here, supported by GEO's own admissions, and through Affidavits are not trivial, inconsequential or speculative; and they are intentional. They are injuries that prevent the University from accomplishing essential functions under the Michigan Constitution, State Law, and the Regents Bylaws, which govern the University. Significantly, these are injuries that will be long lasting and cannot be compensated in damages.

For instance, if the strike continues there will be further serious disruption and impairment of the vital function of the education of approximately 45,000 students, causing damage to their educational and/or professional growth, including their ability to continue classes with assurance that they will be able to effectively make up for the lost instruction. Cancelled classes could jeopardize students' ability to seek career employment or prepare or qualify for graduate programs. If students are not attending classes due to a continuing strike, they could be ineligible for federal student loans and grants necessary to fund their education, and eventually required to repay existing loans. This unlawful strike has and will continue to damage the academic reputation of the University, making it difficult to attract and retain prominent faculty and quality students at both the undergraduate and graduate level. Similarly, it will cause a loss of confidence in the University's educational mission, and the reputation of the quality of public education at the University of Michigan will suffer. Compl Exhibit 4, A Dittmar's Aff ¶¶ 4-12. After only the first day of GEO's strike, numerous concerned parents emailed the University's President expressing their concern and dismay about students' quality of education given the strike. One parent noted that all four of her freshman daughter's classes are cancelled because of the strike, yet the GSIs still expect the students to carry on with the coursework with no instruction. *Id.* at ¶ 8. Finally, the unlawful strike has, in essence, repudiated specific provisions of the collective bargaining agreement and

destroyed the collective bargaining relationship.

Courts in other jurisdictions have found that the type of irreparable harm described above is sufficient to support an award of injunctive relief. For example, in *Temple Assoc of Univ Professionals v Temple University*, 582 A.2d 63 (Cmwlth Pa 1990), the court found that the following factors supported the granting of injunctive relief enjoining a strike by Temple University faculty: (1) a potential reduction in student financial aid; (2) lost course work caused by students unable to carry a full, or in some case, any course load; (3) delay in graduation for eligible students; (4) loss of national statute in graduate education programs; (5) potential loss of substantial sums in tuition revenue; and (6) significant wage tax revenue loss.

In *Joint School District v Wisconsin Rapids Education Ass'n*, 234 NW2d 289, 299 (Wisc 1975), the trial court held that a school board demonstrated irreparable harm in seeking to enjoin a teacher strike in light of the following circumstances:

- (1) The illegal nature of the strike;
- (2) inability of the board to operate the school system and thereby meet its statutory duties and responsibilities to the taxpayers in the school district;
- (3) inability of the students to obtain the benefits of a tax-supported educational process;
- (4) possible loss of state aids;
- (5) inability of parents to comply with statutory responsibility to educate their children; and
- (6) cancellation of athletic events and other school activities.

In *Bristol Township Education Ass'n v School District*, 322 A2d 767 (Cmwlth Pa 1974), the denial of educational programs for students, the loss of instructional days and possible make-up days, and particularly the loss of state subsidies to a school system because of a teacher strike were a significant factors in the court's finding of "present danger or threat to the health, safety or welfare of the public." In *Menard v Woonsocket Teachers' Guild-AFT 951*, 363 A2d 1349, 1354 (RI 1976), disruption of the school calendar and "the disadvantage seniors might experience from an untimely entry into the job market caused by a late school closing" were factors in the court's finding of irreparable harm caused by a teacher strike. And in *Board of Education of the City*

School District of the City of Buffalo, NY v Pisa, 55 AD 2d 128 (NY 1976), the court held that “by its very nature, a strike by public employees constitutes an ‘irreparable injury’ to the public order and welfare” sufficient to justify injunctive relief.

No more is required in the instant case where immediate injunctive relief is necessary and proper. Should the Court not enjoin GEO and its members from engaging in what they admit is unlawful striking during the term of the labor contract, the University of Michigan, its student body, and the general public will be irreparably harmed.

II. The Court should temporarily enjoin GEO’s unlawful strike pending completion of the MERC unfair labor practice proceeding.

MCL § 423.216(h) permits any Charging Party who has filed an unfair labor practice charge at MERC to seek appropriate temporary relief or a restraining order against a person or entity engaging in unfair labor practices, and authorizes this Court to grant temporary relief as it deems “just and proper.” The standards for granting an injunction under Section 16(h) were summarized by the Michigan Court of Appeals in *AFSCME Local 207 v City of Detroit*, 2007 Mich App LEXIS 2364 (unpublished, October 18, 2007):

In determining whether to issue an injunction under §16(h), all usual equitable requirements apply. *Local 229, Michigan Council 25, AF-SCME v Detroit*, 124 Mich App 791, 793-795; 335 NW2d 695 (1983). Thus, “a court must consider (1) the likelihood that the party seeking the injunction will prevail on the merits, (2) the danger that the party seeking the injunction will suffer irreparable harm if the injunction is not issued, (3) the risk that the party seeking the injunction would be harmed more by the absence of an injunction than the opposing party would be by the granting of the relief, and (4) the harm to the public interest, if the injunction is issued. *Alliance for the Mentally Ill of Michigan v Dep’t of Community Health*, 231 Mich 647, 660-661; 588 N.W.2d 133 (1998); see also *Michigan State Employees Ass’n v Dep’t of Mental Health*, 421 Mich. 152, 157-158; 365 N.W.2d 133 (1984). This inquiry often includes the consideration of whether an adequate legal remedy is available to the applicant. *Id.* at 158.

The University filed an unfair practice charge against GEO with MERC on September 8,

2020. Compl Exhibit 3. Not only did the University allege that GEO's strike is an unfair labor practice under MCL § 423.202 (prohibiting public employees from striking during the term of the CBA), the University provided two additional reasons: (1) the work stoppage/strike constituted a repudiation of the CBA in violation of MCL § 423.10, and (2) GEO further violated its duty to bargain by striking in furtherance of non-mandatory and/or illegal subjects of bargaining in violation of MCL § 423.10.

By initiating a strike and work stoppage during the term of the CBA in furtherance of its demands, and by organizing, encouraging and authorizing such strike and work stoppage among its members, GEO has repudiated sections of the collective bargaining agreement (specifically Article III, "No Interference," and Article XXIV "Waiver"), in violation of Section 10(1)(e) of PERA. A party's repudiation of the collective bargaining agreement is an unfair labor practice. See, Wayne County, Public Employer-Respondent, and Michigan AFSCME Council 25, AFL-CIO, Labor Organization-Charging Party, 29 MPER ¶ 1 (explaining that repudiation of the CBA is unlawful).

GEO also committed an unfair labor practice because it struck over non-mandatory subjects of bargaining, specifically those strike demands that relate to non-employee graduate students and the public at large, as well as subjects that are reserved under PERA to the University managerial prerogatives (such as whether classes must be taught through distanced learning).

Michigan law distinguishes between mandatory and non-mandatory subjects of collective bargaining. An employer is not required to bargain on non-mandatory subjects. See, *W Ottawa Educ Ass'n v W Ottawa Pub Sch Bd of Educ*, 126 Mich App 306, 314 (1983). By initiating a work stoppage in furtherance of demands that are non-mandatory and/or illegal subjects of bargaining,

and by organizing, encouraging, and authorizing such work stoppage among members of its bargaining unit, GEO has further violated its duty to bargain and Section 10(1)(e) of MPERA. See *Operating Engineers, Local Union No. 12*, NLRB, 246, (1979) (a strike over a non-mandatory subject of bargaining is an unfair labor practice).

For these reasons, there is a strong likelihood that the University will prevail on the merits of its unfair labor practice charge. As to the second element, irreparable harm, the University has clearly shown, as stated above, and in the Verified Complaint and supporting Affidavits that the University, its students, their families, the general public, will be irreparably harmed if GEO's unlawful strike is not *now* enjoined and more than 90% of the University's undergraduate students continue to unlawfully be deprived of instruction. See *supra*, Argument IB.

With regard to the third element of balancing the relative harm to the parties if an injunction is granted, GEO will suffer no harm whatsoever if it is foreclosed from unlawfully striking. Conversely, the harm to the University, its student body, their parents, and the general public if the injunction is not entered is incalculable. As to the final element, harm to the public, the University of Michigan is a public institution of higher education, and a tremendous asset to the citizens of the State of Michigan. It is clearly in the public interest for the University's operations to be maintained against an admittedly unlawful strike caused by GEO's bad faith bargaining, and for the University to avoid irreparable injury to its academic reputation.

CONCLUSION

Based on the foregoing, the University of Michigan requests that this Court grant the relief requested in the Verified Complaint, and enter a Temporary Restraining Order and Order to Show Cause, and then a Preliminary Injunction.

Respectfully Submitted,

BUTZEL LONG, a professional corporation

By: *Craig S. Schwartz*

Craig S. Schwartz (P36137)

Daniel B. Tukul (P34978)

Sarah L. Nirenberg (P77560)

Attorneys for Plaintiff

41000 Woodward Avenue, Stoneridge West

Bloomfield Hills, Michigan 48304

Schwartz@butzel.com

tukul@butzel.com

nirenberg@butzel.com

Dated: September 14, 2020