

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

EASTERN MICHIGAN UNIVERSITY,

Plaintiff,

v.

22-001203-CL
Case No. 2022- -CL

Hon. JUDGE ARCHIE C. BROWN

EASTERN MICHIGAN UNIVERSITY
CHAPTER OF THE AMERICAN
ASSOCIATION OF UNIVERSITY
PROFESSORS; MOHAMED EL-
SAYED, MARK HIGBEE, CAREN
PUTZU, MATT KIRKPATRICK,
ALANKRITA PANDEY, MINNIE
BLUHM, SARAH FABIAN, JILLIAN
GRAVES, and MATT OCHES.

Defendants.

_____/

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JAMES P. GREENE (P33911)
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VERIFIED COMPLAINT FOR INJUNCTIVE RELIEF

Plaintiff, Eastern Michigan University, ("EMU" or "Plaintiff"), by and through its attorneys, Dykema Gossett PLLC, for its Verified Complaint for Injunctive Relief states as follows:

NATURE OF THE ACTION

1. EMU files this Complaint in order to temporarily and preliminarily enjoin illegal conduct by Eastern Michigan University Chapter, American Association of University Professors (“AAUP”); AAUP’s Executive Committee; and EMU Faculty represented by the AAUP (professors, associate professors, assistant professors, instructors, media service managers, coach/teachers and librarians with Faculty rank). Defendants have engaged in, and continue to engage in, a strike in violation of the Michigan Public Employment Relations Act, MCL 423.201, *et seq.* (“PERA”). This illegal strike—which harms over 15,000 students—is being used to try to increase the economic position of the approximately 500 bargaining unit employees. This strike is causing and will cause EMU permanent and irreparable injuries for which there is no adequate remedy at law. The irreparable harm caused to the public interest by Defendants’ illegal strike is substantial and ongoing and outweighs any harm to the Defendants’ interests if the strike were to be enjoined. Therefore, EMU requests that this Court exercise its equitable powers to restrain Defendants’ illegal conduct, enjoin the illegal strike, and return the bargaining unit employees to work so that EMU can conduct its business, EMU’s students can begin or continue their college careers, and EMU can continue to serve the public that relies upon its services.

PARTIES AND JURISDICTION

2. EMU is a public university sanctioned pursuant to the Constitution and laws of the State of Michigan, and is thus a public employer under the Michigan Public Employment Relations Act. MCL 423.201 *et seq.*

3. EMU has its principal place of business in Ypsilanti, Michigan.

4. EMU is a public educational institution of higher education which offers baccalaureate, masters and doctoral degree programs.

5. EMU employs AAUP bargaining unit members and other employees to teach, perform research, counsel, and provide services as public employees to the students of EMU.

6. Defendant Eastern Michigan University Chapter, American Association of University Professors, (“AAUP”) is, on information and belief, a voluntary unincorporated association, commonly known as a labor organization, carrying on its purposes in the City of Ypsilanti, Michigan. The AAUP is a “bargaining representative” as that term is defined by the PERA, MCL 423.201 *et seq.* One of the purposes of the EMU-AAUP is to serve as the collective bargaining agent of the Faculty at EMU (EMU-AAUP Constitution Article II).

7. Defendant Mohamed El-Sayed is a EMU faculty member and the President of the AAUP Executive Committee; he resides in Oakland County, Michigan, and his business address is located in Ypsilanti, Michigan.

8. Defendant Mark Higbee is a EMU faculty member and the Vice President of the AAUP Executive Committee; he resides in Washtenaw County, Michigan, and his business address is located in Ypsilanti, Michigan.

9. Defendant Caren Putzu is a EMU faculty member and the Treasurer of the AAUP Executive Committee; she resides in Washtenaw County, Michigan, and her business address is located in Ypsilanti, Michigan.

10. Defendant Matt Kirkpatrick is a EMU faculty member and the Secretary of the AAUP Executive Committee; he resides in Washtenaw County, Michigan, and his business address is located in Ypsilanti, Michigan.

11. Defendant Alankrita Pandey is a EMU faculty member and a Member-at-Large of the AAUP Executive Committee; she resides in Washtenaw County, Michigan, and her business address is located in Ypsilanti, Michigan.

12. Defendant Minnie Bluhm is a EMU faculty member and a Member-at-Large of the AAUP Executive Committee; she resides in Washtenaw County, Michigan, and her business address is located in Ypsilanti, Michigan.

13. Defendant Sarah Fabian is a EMU faculty member and a Member-at-Large of the AAUP Executive Committee; she resides in Washtenaw County, Michigan, and her business address is located in Ypsilanti, Michigan.

14. Defendant Jillian Graves is a EMU faculty member and a Member-at-Large of the AAUP Executive Committee; she resides in Wayne County, Michigan, and her business address is located in Ypsilanti, Michigan.

15. Defendant Matt Oches is an Organizer/Contract Representative for Defendant EMU-AAUP, his business address is 2164 Washtenaw Ave., Ypsilanti, MI, on information and belief, he resides in Washtenaw County.

16. The EMU-AAUP Executive Committee acts for the Chapter in carrying out the purposes of the Chapter and its members serve as members of the Chapter's Bargaining Council (EMU-AAUP Constitution Article VI, Section A and C).

17. This Court has jurisdiction to issue an injunction to restrain public employees from striking where there is a showing of violence, irreparable injury, or breach of the peace.

18. Venue is proper in this Court because the activity EMU seeks to enjoin occurred and is occurring in Washtenaw County, and because Eastern Michigan University is located in Washtenaw County.

GENERAL ALLEGATIONS

19. Plaintiff incorporates by reference the allegations of Paragraphs 1 through 18.

20. EMU educates students from all over the United States, and from numerous foreign countries.

21. EMU relies upon its faculty represented by Defendant AAUP to teach a substantial portion of its courses to and on behalf of EMU's students.

22. The student body of EMU consists of approximately 15,000 persons.

23. Fall Semester Classes began on August 29, 2022.

24. Plaintiff employs approximately 500 employees who are represented by Defendant AAUP for purposes of collective bargaining. Said employees comprise the faculty of EMU. All of said employees are public employees within the meaning of the Public Employment Relations Act, MCL 423.201, *et seq.*,

25. Plaintiff and Defendant AAUP were parties to a collective bargaining agreement that covered the period September 1, 2015 – August 31, 2019. The agreement was extended twice, first through August 31, 2021 and then through August 31, 2022 (The "CBA"). The CBA expired on August 31, 2022, and was not extended.

26. Between July 15, 2022, when negotiations began, and August 31, 2022, Plaintiff and Defendant AAUP met 19 times to negotiate a successor agreement, including daily from August 22 through August 31. The last 10 negotiation sessions took place with a mediator appointed by the Michigan Employment Relations Commission ("MERC").

27. Following the expiration of the collective bargaining agreement, the parties met and bargained on September 1, 2, 3 and 4, 2022, each time with the Mediator present.

28. On September 1, 2022, Plaintiff filed a petition for fact finding with the Michigan Employment Relations Commission (attached as Exhibit A), prior to Defendants commencing their illegal strike.

29. Fact finding is a State of Michigan process which assists public employers and labor unions representing public employees to reach a collective bargaining agreement MCL 423.25; Mich Admin Code, R 423.132.

30. To date, these negotiations and mediation have not resulted in agreement between the parties.

31. On September 6, 2022, Defendant AAUP voted to commence a strike on September 7, 2022.

32. On September 7, 2022, Defendant AAUP, its members and agents and those acting in concert with the same, including EMU faculty represented by the AAUP, began a strike and picketed at various buildings and locations of or adjacent to EMU.

33. Defendants have continued to strike, and have persuaded, encouraged, induced and directed employees of Plaintiff to strike, picket, fail to report for duty, engage in the stoppage of work or abstain, in whole or in part, from performing their duties of employment in violation of MCL 423.202 and MCL 423.206(1).

34. The strike was called for the purpose of inducing, influencing, or coercing a change in employment conditions, compensation, or the rights, privileges, or obligations of employment of EMU faculty represented by the AAUP.

35. The failure of the EMU faculty represented by the AAUP to report to work on September 7, 2022, has halted the normal operation of EMU.

36. The strike by Defendants is illegal, being in violation of the provisions of the PERA and is contrary to the public policy of the State of Michigan.

37. As a result of the strike, Plaintiff, the EMU student body, non-AAUP employees of EMU, and the general public, which supports and is served by EMU, have been threatened with irreparable injury and will continue to suffer and be threatened with serious irreparable injury, for which they have no adequate remedy at law, so long as the illegal conduct of Defendants continues, including:

- a. Hindering, altering, and delaying the academic progress of EMU's over 15,000 undergraduate and graduate students which could ultimately result in delayed graduation.
- b. Requiring affected students to defer, delay, or forgo entirely planned post-graduate employment and planned graduate studies, both of which are contingent on the completion of their degree.
- c. Hindering of students' preparation for licensure or certification examinations, required for entry into certain professions or positions.
- d. Delaying disbursement of financial aid to students relied upon as support for meeting basic needs during the school year, including food and housing.
- e. If the semester is prolonged to make up missed classes, there will be a negative impact on students' planned employment during the winter break, which aids students' finances and career perspectives.
- f. Possible loss of state, regional and national accreditation, and non-compliance with federal requirements, if a strike continues.

- g. Loss of reputation in the quality of public education at the University on behalf of the students, parents and the general public if such illegal conduct is allowed to continue, which could lead to enrollment decline.
- h. Loss of student social work clinical/field settings opportunities.
- i. Inability of students to make up required lab sessions.
- j. Increase anxiety amongst students due to uncertainty of schedules.
- k. Inability to timely provide mental health counseling to students due to increased demand.
- l. Inability of fill-in instructors to adequately address student disability accommodation requests.
- m. Unavailability of Faculty advisors to over 200 student groups.
- n. International students who are not able to meet minimum hours requirements will be required to leave the country.
- o. Loss of tuition and room and board revenue.
- p. EMU's bond rating and capital projects would be jeopardized with loss of tuition and room and board revenue.
- q. Negative impact on local businesses as a result of students leaving campus.
- r. Layoff of non-AAUP employees.
- s. Negative impact on current fundraising campaign and future fundraising efforts resulting in immediate and long-lasting negative impact on the University's finances and academic and extracurricular programs.
- t. Negative impact on retention of current students and recruitment of future students.
- u. Loss of scholarship for student athletes and job opportunities in administrative and management positions.

38. The only remedy which will effectively restore the rights of Plaintiff, the EMU student body, non-AAUP employees of EMU and the general public is an immediate order of this Court prohibiting the acts set forth in paragraphs (C)(1) - (C)(3) below.

39. The injunctive relief prayed for in this Complaint will not deprive the Defendants, or any of them, of any legal right and will in no way cause the Defendants any loss, injury or damage.

REQUEST FOR RELIEF

For these reasons set forth above, and in Plaintiff's Emergency Ex Parte Motion for Entry of a Temporary Restraining Order, Order to Show Cause and Preliminary Injunction, in Plaintiff's Brief in Support of Motion, and in the affidavits filed with the Brief, all of which are incorporated by reference herein, Eastern Michigan University, prays that:

- A. This Court issue a Temporary Restraining Order commanding the individual Defendants and the AAUP, its officers, agents, employees, representatives, organizers, bargaining unit members, and all persons acting in concert with them or any of them, to absolutely desist and refrain from each and all of the acts listed in paragraphs (C)(1) - (C)(3) below, until further order of this Court.
- B. This Court order the individual Defendants and the AAUP, its officers, agents, employees, representatives, organizers, bargaining unit members, and all persons acting in concert with them or any of them, to show cause why they should not be enjoined, during the pendency of this suit, from the acts stated in paragraphs (C)(1) - (C)(3) below.
- C. This Court issue, after a hearing pursuant to the above Order to Show Cause, a Preliminary Injunction commanding the individual Defendants and the AAUP, its officers, agents, employees, representatives, organizers, bargaining unit members, and all persons acting in

concert with them, or any of them, to absolutely cease, desist, and refrain from each and every of the following acts until such time as a final decision on the merits of this case be entered by the Court:

1. From striking, under any guise whatsoever, including any concerted failure to report for duty, or willfully absenting themselves from their positions, stopping work, or abstaining in whole or in part from the full, faithful and proper performance of their 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.
 2. From encouraging, inducing or persuading faculty employees of EMU to strike, under any guise whatsoever, including any concerted failure to report for duty, or willfully absenting themselves from their positions, stopping work, or abstaining in whole or in part from the full, faithful and proper performance of their 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.
 3. From obstructing or interfering with the ingress and egress from EMU buildings and premises or the use of roads or other ways of travel, or from disrupting or otherwise interfering with EMU classes, extracurricular activities, and sporting events, by picketing or by other means.
- D. Upon final hearing in this cause, the Court issue a Permanent Injunction commanding the individual Defendants and the AAUP, its officers, agents, employees, representatives, organizers, bargaining unit members, and all persons acting in concert with it absolutely

to desist and refrain from each and every of the acts which are stated in paragraphs (C)(1) - (C)(3) above.

- E. This Court order the individual Defendants and the AAUP, by its officers, to notify each of its bargaining unit members who are employees of EMU of the entry of this Court's Temporary Restraining Order and its Preliminary Injunction and inform them that they are legally bound to abide by the terms set forth in such orders. Each notice shall immediately be given orally to as many members as the officers can reasonably reach and in writing sent to the members of the AAUP by email, with read receipt requested. A copy of the e-mail and evidence of the e-mailing of notice of each of the Court's Orders shall be filed with this Court on or before the expiration of three (3) days following first service of each of the Court's Orders upon any officer or agent of the AAUP.
- F. The Court award Plaintiff its costs and attorneys' fees incurred in having to bring this action; and grant Plaintiff such other and further relief as the Court shall deem proper.

I declare that the statements above are true to the best of my information, knowledge and belief.

SIGNATURES APPEAR ON NEXT PAGE

Dated:

9/7/22

EASTERN MICHIGAN UNIVERSITY,

By:

James M. Smith, Ph.D.

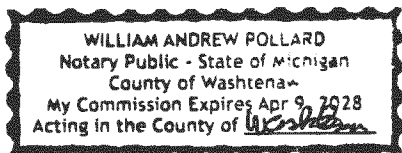
President, Eastern Michigan University

State of Michigan)

) ss.

County of Washtenaw)

On this 7th day of September, 2022, before me a Notary Public in Washtenaw County, personally appeared James M. Smith, to me personally known, who, being by me duly sworn, did say that he is the President of Eastern Michigan University, that he is duly authorized to sign said Complaint on behalf of said Plaintiff, that he has read said Complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters contained in the affidavits of others, and as to those matters he believes it to be true.



William Andrew Pollard

Notary Public, Washtenaw County, Michigan
My Commission Expires: April 9, 2028

Dated: September 7, 2022

/s/Melvin J. Muskovitz

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