# STATE OF MICHIGAN

# COURT OF APPEALS

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| MACOMB COUNTY PROFESSIONAL DEPUTY SHERIFFS ASSOCIATION,<br><br>Plaintiff-Appellee, | UNPUBLISHED<br>April 23, 2013 |
| v | No. 308686<br>Macomb Circuit Court |
| COUNTY OF MACOMB,<br><br>Defendant-Appellant. | LC No. 2012-000178-CL |

Before: MARKEY, P.J., and TALBOT and STEPHENS, JJ.

PER CURIAM.

Defendant appeals by right the trial court's order granting in part and denying in part plaintiff's motion for injunctive relief. At issue on appeal is the trial court's issuance of injunctive relief prohibiting defendant from deducting from plaintiff's members' wages any health care costs associated with the enactment and implementation of the Publicly Funded Health Insurance Contribution Act[1] (PFHICA), MCL 15.561 *et seq.*, while the parties continued negotiating on a successor collective bargaining agreement (CBA). Because plaintiff failed to establish irreparable harm or an inadequate remedy at law, we conclude that the trial court abused its discretion in issuing the preliminary injunction and, therefore, we reverse.

Plaintiff is a voluntary labor association located in Macomb County and is the exclusive bargaining agent for employees of the Macomb County Sheriff's Department in the classification rank of correctional officer. Defendant is a municipal corporation and employs the correctional officers. Plaintiff and defendant are parties to a CBA that began on January 1, 2008, and expired on December 31, 2010. Although the CBA expired, the parties continued to operate under its terms pursuant to an unwritten extension while they continued negotiations on a successor CBA.

During negotiations, defendant informed plaintiff via email of its intent to comply, effective January 2012, with both PFHICA and § 15b[2], MCL 423.215b, of the Public Employment Relations Act (PERA), MCL 423.201 *et seq*. Shortly thereafter, plaintiff filed an

[1] 2011 PA 152, effective September 27, 2011.

[2] The Legislature added § 15b to PERA by enacting 2011 PA 54, effective June 8, 2011.

unfair labor practice charge against defendant before the Michigan Employment Relations Commission (MERC) alleging, among other charges, that defendant failed to negotiate in good faith on its successor CBA because it refused to provide documentation of increased health care costs, either intentionally or negligently disseminated false information relating to PFHICA and § 15b that members relied on to their detriment during bargaining, and misstated the fact that the health care plans would be subject to both PFHICA and § 15b during continued bargaining.

Plaintiff also filed a complaint in the circuit court seeking a preliminary injunction until the unfair labor practice charge was resolved and to enjoin defendant from taking any action pursuant to both PFHICA and § 15b. Plaintiff further asserted that there was no adequate remedy at law, and that unless the trial court issued the preliminary injunction, its members would suffer "serious and irreparable harm." The trial court denied plaintiff's request for preliminary injunction with regard to the implementation of § 15b, but granted plaintiff's request for injunctive relief with regard to PFHICA, holding specifically that defendant "shall be prohibited from deducting from [p]laintiff and its members' wages any health care costs associated with Public Act 152 while collective bargaining continues between the parties and until such time as a successor Collective Bargaining Agreement is agreed to and executed by the parties . . . ." Defendant appeals by right from the portion of the trial court's order granting injunctive relief in favor of plaintiff.

This Court reviews a trial court's decision to grant or deny an injunction for an abuse of discretion. *Kernen v Homestead Dev Co*, 232 Mich App 503, 510; 591 NW2d 369 (1998). An abuse of discretion exists when the decision falls outside of the range of principled outcomes. *Detroit Fire Fighters Ass'n, IAFF Local 344 v Detroit*, 482 Mich 18, 28; 753 NW2d 579 (2008). A question of statutory interpretation is a question of law that this Court reviews de novo. *Id*.

Public labor relations in Michigan are governed by PERA. One of PERA's primary purposes "'is to resolve labor-management strife through collective bargaining.'" *Detroit Fire Fighters Ass'n*, 482 Mich at 28-29 (citation omitted). The parties do not dispute that plaintiff had a right to seek injunctive relief from the trial court pending resolution by MERC of its unfair labor practice charge against defendant. This Court has stated that:

> Under the public employment relations act (PERA), MCL 423.201 *et seq*., a charging party may petition a circuit court for "appropriate temporary relief or restraining order, in accordance with the general court rules, and the court shall have jurisdiction to grant to the commission or any charging party such temporary relief or restraining order as it deems just and proper." MCL 423.216(h). Therefore, [a] plaintiff[] ha[s] the burden of showing that a preliminary injunction should be issued. MCR 3.310(A)(4). Traditional equity principles are a circuit court's guide to whether injunctive relief is just and proper. [*Michigan AFSCME Council 25 v Woodhaven-Brownstown School Dist*, 293 Mich App 143, 147; 809 NW2d 444 (2011)(citation and internal quotations omitted).]

"To obtain a preliminary injunction, the moving party 'bears the burden of proving that the traditional four elements favor the issuance of a preliminary injunction.'" *Hammel v Speaker of the House of Representatives*, 297 Mich App 641, 648; 825 NW2d 616 (2012), quoting *Detroit Fire Fighters Ass'n*, 482 Mich at 34. This test requires the trial court to 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 not issued. [*Michigan AFSCME Council 25*, 293 Mich App at 148 (citation omitted).]

Here, the trial court did not articulate any consideration of the four factors necessary to a determination of whether a preliminary injunction should issue. Instead, the trial court decided the issue solely on its legal determination that § 15b "controls" over PFHICA and held that by operation of law, justice necessarily required issuance of a preliminary injunction. Because the trial court failed to engage in an analysis of the traditional four elements, it is difficult, if not impossible, for this court to consider this appeal the way it would traditionally address appeals from a preliminary injunction determination.

Still, the resolution of this matter is straightforward, and does not now require a legal determination with regard to consequences of any alleged interplay between § 15b and PFHICA on plaintiff's and defendant's continued collective bargaining. "In the context of labor disputes, [our Supreme] Court has observed that 'it is basically contrary to public policy in this State to issue injunctions in labor disputes absent a showing of violence, irreparable injury, or breach of the peace.'" *Pontiac Fire Fighters Union Local 376 v Pontiac*, 482 Mich 1, 8; 753 NW2d 595 (2008), quoting *Holland School Dist v Holland Ed Ass'n*, 380 Mich 314, 326; 157 NW2d 206 (1968). This Court has similarly articulated that "[i]njunctive relief is an extraordinary remedy that issues only when justice requires, there is no adequate remedy at law, and there exists a real and imminent danger of irreparable injury." *Kernen*, 232 Mich App at 509, quoting *Jeffrey v Clinton Twp*, 195 Mich App 260, 263-264; 489 NW2d 211 (1992). A particularized showing of irreparable harm is an indispensible requirement for a preliminary injunction. *Mich AFSCME Council 25*, 293 Mich App at 149. An injunction will not be issued merely on the apprehension of a future injury or where the threatened injury is speculative or conjectural. *Id*.; See also *Pontiac Fire Fighters*, 482 Mich at 8-9.

Here, plaintiff has not shown the existence of potentially irreparable injury. A hearing before MERC was scheduled to occur during the pendency of this appeal. Based on plaintiff's characterization of its unfair labor charge, MERC will decide whether defendant's plan to deduct additional money from plaintiff's members' payroll was permitted by PFHICA and § 15b or was impermissible because the parties were engaged in continued negotiations including the subject of health care costs, thus committing an unfair labor practice. If MERC determines that defendant committed an unfair labor practice, it can order monetary damages or provide another remedy to make plaintiff's members whole. *Pontiac Fire Fighters*, 482 Mich at 9-10.

Also, the record demonstrates that plaintiff's *only* damages would be financial. In particular, the money damages would equal the additional amount of payroll deduction that each employee would be charged per month for his or her health care in 2012 as a result of defendant's implementation of PFHICA and § 15b during continued negotiations. Defendant provided the trial court with an affidavit from its human resource director that included the exact amount of additional payroll deduction that each employee would pay per month for health care

in 2012 as a result of implementing PFHICA and § 15b. The affidavit listed the employees' annual salaries and showed (in rounded sums) that 35 employees would pay $5 or less per month; 28 employees would pay $43 or $44 per month; 11 employees would pay $86 per month, 64 employees would pay between $134 and $137 per month; six employees would pay between $380 and $382 per month, and four employees would pay $388 per month. Thus, plaintiff's alleged money damages are exactly quantified per employee. Because plaintiff has failed to establish irreparable harm or an inadequate remedy at law, the trial court's issuance of the preliminary injunction was an abuse of discretion. *Pontiac Fire Fighters*, 482 Mich at 10.

We reverse.

/s/ Jane E. Markey
/s/ Michael J. Talbot
/s/Cynthia Diane Stephens