STATE OF MICHIGAN

IN THE SUPREME COURT

Appeal from the Michigan Court of Appeals

PONTIAC FIRE FIGHTERS UNION
LOCAL 376,

Plaintiff-Appellee, Docket No. 132916

v.

CITY OF PONTIAC

Defendant-Appellant.

BRIEF OF *AMICI CURIAE* THE MICHIGAN MUNICIPAL LEAGUE AND THE MICHIGAN ASSOCIATION OF COUNTIES IN SUPPORT OF DEFENDANT-APPELLANT

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STATEMENT OF BASIS OF JURISDICTION

The jurisdictional summary set forth in Defendant-Appellant's Application for Leave to Appeal is complete and correct.

STATEMENT OF QUESTIONS INVOLVED

Did the Court of Appeals abuse its discretion when it issued an injunction to prevent layoffs based on alleged irreparable harm to the laid-off employees?

The Circuit court would answer:	No
The Court of Appeals would answer:	No
Defendant-Appellant would answer:	Yes
Amici Curiae the Michigan Municipal League and the Michigan Association of Counties would answer:	Yes
Plaintiff-Appellee would answer:	No
This Court should answer:	Yes

Did Plaintiff present sufficient evidence to support its claim of an increased risk of harm to the fire fighters who would not be laid off?

The Circuit court would answer:	No
The Court of Appeals would answer:	No
Defendant-Appellant would answer:	Yes
Amici Curiae the Michigan Municipal League and the Michigan Association of Counties would answer:	Yes
Plaintiff-Appellee would answer:	No
This Court should answer:	Yes

Did the Court of Appeals err in holding that the circuit court had jurisdiction to grant a preliminary injunction with respect to the breach of contract claim, when the requisites for injunctive relief were not met?

The Circuit court would answer:	No
The Court of Appeals would answer:	No

Defendant-Appellant would answer:	Yes
Amici Curiae the Michigan Municipal League and the Michigan Association of Counties would answer:	Yes
Plaintiff-Appellee would answer:	No
This Court should answer:	Yes

Did the Court of Appeals err in holding that the circuit court had jurisdiction to enjoin an alleged unfair labor practice, when the requisites for injunctive relief were not met?

The Circuit court would answer:	No
The Court of Appeals would answer:	No
Defendant-Appellant would answer:	Yes
Amici Curiae the Michigan Municipal League and the Michigan Association of Counties would answer:	Yes
Plaintiff-Appellee would answer:	No
This Court should answer:	Yes

THE INTEREST OF *AMICI CURIAE* THE MICHIGAN MUNICIPAL LEAGUE AND THE MICHIGAN ASSOCIATION OF COUNTIES

The Michigan Municipal League is a non-profit Michigan corporation whose purpose is the improvement of municipal government and administration through cooperative effort. Its membership is comprised of over 500 Michigan municipalities, of which nearly 85% are also members of the Michigan Municipal League Legal Defense Fund.

The Michigan Municipal League operates the Legal Defense Fund through a board of directors. The purpose of the Legal Defense Fund is to represent its members in litigation of statewide significance. This brief *amicus curiae* is authorized on behalf of the Michigan Municipal League by the Legal Defense Fund's board of directors.

The Michigan Association of Counties is a non-partisan, non-profit alliance of county commissioners that promotes education, communication, and cooperation in order to improve Michigan local government. Its membership is comprised of 80 of Michigan's counties.

This case involves questions of (a) the appropriateness of granting a preliminary injunction in the context of labor disputes, and (b) the amount and nature of evidence necessary to warrant a circuit court's grant of a preliminary injunction.

This Court's ruling will have far-reaching effects on public employers statewide. The granting of preliminary injunctions to prevent layoffs of public employees impairs the ability of municipalities to manage their affairs and balance their budgets in the face of fiscal emergencies. Further, unrestricted access to judicial resources will lead public employees to use the circuit courts to enforce labor contracts, even when a grievance arbitrator or the Michigan Employment Relations Commission ("MERC") has exclusive or primary jurisdiction over the dispute, thereby usurping the power of the rightful decision-makers in labor dispute cases. This Court has uniformly held that labor injunctions should issue only in extreme circumstances. Moreover, this

Court has consistently held that, in order to obtain a preliminary injunction, a party must make a showing of a concrete and particularized irreparable harm. If the Court of Appeals' decision in this case is affirmed, it will not only allow a circuit court to grant the extraordinary remedy of a preliminary injunction in everyday labor disputes, but it will also permit a circuit court to grant such relief based upon unsupported allegations.

This Court specifically invited the Michigan Municipal League and the Michigan Association of Counties (collectively, the "Amici") to file *amicus curiae* briefs in its June 15, 2007 Order granting leave to appeal in this case.

STATEMENT OF FACTS AND PROCEEDINGS

The facts of this case are neither extraordinary nor novel. Rather, this is a run-of-the-mill case in which a city's elected representatives decide to layoff a number of employees for fiscal reasons. Despite the ordinary nature of this case, both the circuit court and the Court of Appeals erroneously found that the most extraordinary of remedies—a preliminary injunction—was appropriate to prevent the City of Pontiac ("City) from laying off a portion of its firefighting squad.

In June of 2006, the City faced a major financial crisis. The Mayor of the City, in his capacity as the elected representative of the people, proposed a budget plan. The budget plan included several drastic measures, such as eliminating public services and tax supported recreational programs, and closing community centers and the public library. In addition to the aforementioned measures, the Mayor also determined that it was necessary to lay off a number of City-employed personnel, which included fire fighters. *Defendant-Appellant City of Pontiac's Application for Leave to Appeal*, at 2.

In response, Local 376, Pontiac Fire Fighters Union ("Plaintiff") filed a grievance per the labor contract; filed suit against the City, alleging that the impending layoff constituted a breach

of the parties' 2001-2004 collective bargaining agreement; ***and*** filed an unfair labor practice, claiming that the City's actions were in violation of the Michigan Public Employment Relations Act ("PERA").[1] Verified Complaint and Request for Temporary Restraining Order, Order to Show Cause and Injunctive Relief. Plaintiff's Complaint requested that the trial court enjoin the City from laying off ***any*** fire fighters until the parties' dispute was adjudicated by a grievance arbitrator or by MERC.

On July 28, 2006, the trial court held a hearing to determine whether the preliminary injunction should issue. The trial court took *no* testimony, and Plaintiff presented *no* evidence of irreparable harm to support the granting of the injunction. Plaintiff's sole proffered "evidence," presented only upon "information and belief," hypothesized that the remaining fire fighters' safety would be jeopardized if the total complement of fire fighters was reduced. In response to Plaintiff's unsupported allegations, the City supplied an affidavit from its Fire Chief, detailing the reasons why the remaining fire fighters would not suffer irreparable harm in the absence of an injunction. Despite the utter lack of evidence of irreparable harm, the circuit court granted a preliminary injunction, enjoining the city from laying off any fire fighters until a decision was reached by MERC, a grievance arbitrator, or by an Act 312 arbitration panel.

The Court of Appeals upheld the injunction, finding that "Plaintiff ***may*** be irreparably harmed since a reduction in the workforce and the closing of several City fire stations would result in a significant increased risk of harm for the remaining fire fighters." *Pontiac Fire Fighters Union Local v City of Pontiac,* No. 271497, slip op at 6 (Nov 30, 2006) (per curiam) (unpublished) (emphasis added). In dissent, Judge Hoekstra correctly recognized that there was

[1] The Complaint also contained several other counts, not relevant for the purposes of this appeal.

absolutely no irreparable harm, and he would have reversed the circuit court's grant of preliminary relief.

More than a year has passed since the circuit court erroneously granted the preliminary injunction, and the City remains subject to the court's flawed ruling. As of today's date, MERC has yet to issue a decision regarding the union's unfair labor practice claim. A grievance arbitration regarding the alleged breach of contract claim has *not even commenced.* Meanwhile, the cash-strapped City has been forced to pay more than 2 million dollars for unnecessary services. *Defendant-Appellant City of Pontiac's Application for Leave to Appeal*, at 6.

ARGUMENT

I. THE STANDARD OF REVIEW.

This Court reviews a circuit court's decision to grant a preliminary injunction for an abuse of discretion. *Michigan Coalition of State Employee Unions v Civil Service Comm,* 465 Mich 212, 217; 634 NW2d 692 (2001). When a circuit court's decision falls outside of the range of reasonable and principled outcomes, an abuse of discretion has occurred. *Maldonado v Ford Motor Co,* 476 Mich 372, 388; 719 NW2d 809 (2006). A circuit court may not exercise its discretion arbitrarily, but rather, its decision must be in accordance with the evidence presented in the case. *Jeffrey v Clinton Township,* 195 Mich App 260, 264; 489 NW2d 211 (1992). Therefore, a circuit court also abuses its discretion when it grants a preliminary injunction in the absence of evidence demonstrating a real and imminent danger of irreparable injury. *Id.*

While a circuit court's decision to issue a preliminary injunction is reviewed for an abuse of discretion, the facts on which the court relies in exercising its discretion are reviewed for clear error. *International Union, UAW v State,* 231 Mich App 549, 551; 587 NW2d 821 (1998). A clear error has occurred when the circuit court exercises its power to grant an injunction on a meager record that is void of any concrete, specific, and certain evidence of irreparable harm.

See, e.g., Holland School District v Holland Ed'n Ass'n, 380 Mich 314; 157 NW2d 206 (1968); *State Employees Ass'n v Dep't of Health,* 421 Mich 152; 365 NW2d 93 (1984).

II. THE CIRCUIT COURT ABUSED ITS DISCRETION WHEN IT GRANTED THE PRELIMINARY INJUNCTION.

This Court's precedent regarding the issuance of preliminary injunctions is well-settled, and the circuit court's preliminary injunction fell far outside of those well-settled principles of law. Further, Michigan law dictates that "[t]he term discretion itself involves the idea of a choice, of an exercise of the will, of a determination made between competing considerations. In order to have an 'abuse' in reaching such determination, the result must be so palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, not the exercise of judgment but defiance thereof, not the exercise of reason but rather of passion or bias." *People v Babcock,* 244 Mich App 64, 76; 624 NW2d 479 (Mich App 2000). There is *no principle of law upon which the circuit court judge could have based his decision to grant a preliminary injunction.* The circuit court issued an opinion that defies both logic and this Court's clear precedent regarding preliminary injunctions, and one may only conclude that the circuit court's decision was result-oriented and constituted an abuse of discretion.

A preliminary injunction is an extreme remedy that only should issue in extraordinary circumstances. *State Employees, supra,* at 166. The purpose of a preliminary injunction is to maintain the status quo pending a final hearing regarding the parties' rights. *Alliance for Mentally Ill of Michigan v Dep't of Community Health,* 231 Mich App 647, 655-656; 588 NW2d 133 (1998).

In deciding whether the circumstances of a case are sufficiently extraordinary to warrant the issuance of a preliminary injunction, the Court must consider the following four factors:

> (1) harm to the public interest if the injunction issues; (2) whether harm to the applicant in the absence of temporary relief outweighs the harm to the opposing

party if relief is granted; (3) the likelihood that the applicant will prevail on the merits; and (4) a demonstration that the applicant will suffer irreparable injury if the relief is not granted. *Thermatool v Borzym,* 227 Mich App 366, 376; 575 NW2d 334 (1998).

The circuit court's issuance of a preliminary injunction to enjoin the City from laying off a number of its fire fighters constituted an abuse of discretion for the following reasons:

- ***There was no danger of irreparable harm***: Michigan law clearly demonstrates that a circuit court *does not have jurisdiction to grant an injunction unless there has been a clear showing of irreparable injury for which there is no other adequate remedy. Detroit News Pub Ass'n v Detroit Typo Union No 18,* 471 F2d 872, 876 (CA 6 1972). This Court has consistently ruled that, before a preliminary injunction may be granted, a plaintiff *must* demonstrate irreparable harm. "This is utterly unexceptional. It has, indeed, been our law...unvaryingly since Michigan became a state." *Michigan Coalition of State Employee Unions, supra,* at 226-227. *Plaintiff did not make a clear showing of irreparable injury.* Rather, Plaintiff offered, and the circuit court based its opinion and order on unsupported and speculative allegations.

- ***The preliminary injunction granted Plaintiff all of the relief it would be entitled to were it to prevail on the merits***: This Court has long recognized that it may not grant a preliminary injunction if doing so would give the plaintiff all of the relief that it would be entitled to if it were to prevail on the merits. *See Epworth Assembly v Ludington & N RY,* 223 Mich 589 (1923) 194 NW 562 Mich; *Thermatool, supra,* at 378. Plaintiff filed this lawsuit, seeking continuation of employment, and the preliminary injunction has thus far continued said employment for over a year.

- ***The preliminary injunction was unnecessary to preserve the status quo***: This Court must consider whether a preliminary injunction will effectively serve its purpose of preserving the status quo so that "a final hearing can be held without either party having been injured." *Michigan State AFL-CIO v Secretary of State,* 230 Mich App 1, 14; 583 NW2d 701 (1998). In this case, there was *absolutely no danger* of a change in the status quo. If an arbitrator or MERC finds that the City breached the contract or its duty to bargain, make-whole relief would issue.

- ***The injunction imposes an injury on the City that cannot be undone, even if it were to prevail on the merits***: Michigan law also provides that an injunction is improper if it imposes an injury on a party that cannot be undone, even if it were to prevail on the merits. *Thermatool, supra,* at 378. In this case, the City has already been injured as a result of the wrongfully granted preliminary injunction, in an amount above 2 million dollars.

III. THE CIRCUIT COURT COMMITTED CLEAR ERROR WHEN IT GRANTED THE PRELIMINARY INJUNCTION, BECAUSE IT DID NOT MAKE A FACTUAL FINDING SUFFICIENT TO WARRANT THE INJUNCTION.

A circuit court commits clear error when it grants an injunction based upon clearly erroneous findings of fact. *International Union, UAW, supra,* at 551. This Court has vacated preliminary injunctions when a plaintiff fails to introduce sufficient proof in support of the injunction, particularly when a plaintiff fails to make the necessary showing of *concrete, particularized* irreparable harm. *See, e.g., Kernen v Homestead Development Co,* 232 Mich App 503, 515; 591 NW2d 369 (1998); *Holland School District, supra.*

In this case, the circuit court found that

> Plaintiff ***may*** be irreparably harmed since a reduction in the workforce and closing of several City fire stations would result in a significant increased risk of harm for the remaining fire fighters. Fewer fire fighters would be available to respond to fires and the closing of stations caused by the lay off would result in the fire fighters having to cover a larger territory. The remaining fire fighters thus would not be able to respond as quickly as they used to which means that they would be faced with fires that have increased in intensity or size and as a result are more dangerous. (emphasis added)

Local 376 Pontiac Fire Fighters Union v City of Pontiac, No. 06-075-367-CL, slip op at 2 (Oakland Cty Cir Ct June 30, 2006) (unpublished). *The circuit court took no testimony and its aforementioned finding was based solely upon the Plaintiff's "information and belief" complaint.* In contrast, the City offered specific, detailed evidence from its fire chief, describing the reasons why irreparable harm would not result from the firefighter layoff. As the Court of Appeals' majority recognized,

> [t]he fire chief testified that the great majority of calls to the city's fire department are medical runs, and in the event the department is at the minimum level of seventeen fire fighters on a given day, private ambulance services will be used to respond to medical runs, and the City's fire fighters will be used solely for fighting fires. After the layoffs, the fire department will continue to utilize both an incident command system and the "two in two out" rule, which forbids a firefighter from entering a burning structure without another firefighter, and without two fire fighters remaining outside the structure. In addition, the

> department will continue to assign a safety officer to each fire. The number of fire fighters at a fire will not be impacted.

Pontiac Fire Fighters Union Local v City of Pontiac, No. 271497, slip op at 3, n2 (Nov 30, 2006) (per curiam) (unpublished).

Under Michigan law, "it is well settled that an injunction will not lie upon the mere apprehension of future injury where the threatened injury is speculative or conjectural." *Dunlap v City of Southfield,* 54 Mich App 398, 403; 221 NW2d 237 (Mich App 1974). It is erroneous, contrary to basic legal principles, and also simply baffling, that the circuit court would discount the City's *concrete, particularized* evidence, while wholly relying upon the Plaintiff's *unsupported* and *speculative* allegations.

Statistical evidence also demonstrates the fallaciousness of the circuit court's assumption that the remaining fire fighters will be exposed to an increased risk of harm. First, contrary to popular belief, *firefighting is not a dangerous occupation.* The U.S. Department of Labor reports that the 10 most dangerous occupations include fishing workers, logging workers, and driving related occupations, including sales workers and truck drivers. *Firefighting is not mentioned as a dangerous occupation.* U.S. Bureau of Labor Statistics, "*Current Population Survey: Census of Fatal Occupational Injuries.*" (2005). In fact, only .07% of occupational fatalities nationwide may be attributed to fire fighters. U.S. Bureau of Labor Statistics, "*Fatal Occupational Injuries to Private Sector Wage and Salary Workers, Government Workers, and Self-Employed Workers by Industry.*" (2005). The majority of these fatalities are the result of transportation incidents, and not of fire-related incidents. *Id.* Furthermore, according to the U.S. Fire Administration Statistics, approximately 62% of fire department responses nationwide constitute medical aid. In comparison, only 6.8% of response involve suppressing fires. U.S. Fire Administration, *"2005 Response Breakdown."* (2005). Even if firefighting were a dangerous occupation, *the statistics*

clearly show that fire fighters are rarely injured in fire-related incidents, and that fire fighters actually spend very little time fighting fires. The bulk of firefighter fatalities occur as a result of transportation incidents, and not of fire related incidents. U.S. Bureau of Labor Statistics, *"Fatal Occupational Injuries by Occupation and Event or Exposure."* (2005). These statistics are consistent with the fire chief's affidavit, which states that the layoff will not cause a risk of increased harm to the fire fighters. In fact, if most fire fighters are injured in transportation-related accidents, the layoffs here would actually *decrease* the risk of firefighter fatalities, because, as the Fire Chief noted, the fire department's medical transportation runs would be taken over by private ambulance services.

IV. A CIRCUIT COURT RARELY WILL HAVE JURISDICTION TO GRANT PRELIMINARY RELIEF IN A BREACH OF CONTRACT ACTION.

Although the instant dispute does not present such a situation, a circuit court has jurisdiction to grant a preliminary injunction in a breach of contract action, if the necessary prerequisites for temporary relief, including irreparable injury, are satisfied. However, those prerequisites rarely will be met, due to the monetary nature of the damages in a typical breach of contract action. Michigan courts have made it clear that a breach of contract claim generally does not establish irreparable injury. No irreparable injury exists unless the moving party demonstrates "a noncompensable injury for which there is no legal measurement of damages or for which damages cannot be determined with a sufficient degree of certainty." *Thermatool, supra,* at 377. "Economic injuries are not irreparable because they can be remedied by damages at law." *Id.* Furthermore, "loss of employment is not irreparable harm and will not support a claim by [a] union for injunctive relief," especially when the loss of employment is the result of job eliminations by a solvent employer. *Local Union No 215 v Consolidated Aluminum Corp,* 696 F2d 437, 443 (CA 6 1982).

As the dissenting Judge Hoekstra correctly recognized,

> The irreparable injury necessary for the grant of preliminary injunctive relief cannot, however, be established by a mere breach of contract, economic damages, or an apprehension of future injury. To the contrary, to establish such harm the party seeking a preliminary injunction must demonstrate a noncompensable injury that is actual, certain, and great, and for which there is no legal measurement of damages. For this reason, it is generally inappropriate that a preliminary injunction be issued to reinstate an employee or prevent his layoff.

Pontiac Fire Fighters Union Local v City of Pontiac, No. 271497, slip op at 2 (Nov 30, 2006) (unpublished) (citations omitted).

A typical action for a breach of a labor contract will almost never trigger the prerequisites for a preliminary injunction, because the remedy for such an action normally consists of back-pay and reinstatement, or other appropriate relief as circumstances warrant. The case at bar is utterly unexceptional—it is nothing more than a typical, everyday action for the alleged breach of a labor contract. If an arbitrator were to find that the City breached its collective bargaining agreement when it laid off the fire fighters, the fire fighters would receive back pay and reinstatement. There is nothing difficult or uncertain about calculating back pay, and such damages are clearly economic in nature. Any economic losses to which a laid off employee may be exposed due to the alleged breach of a labor contract simply do not constitute irreparable harm that would justify the granting of an injunction. *See UAW Local 6000 v State,* 194 Mich App 489; 491 NW2d 855 (1992).

A. A circuit court must exercise special caution in granting preliminary relief when the breach of contract claim ultimately will be submitted to an arbitrator.

In this case, the parties' collective bargaining agreement provided for final and binding grievance arbitration of all disputes. *Defendant-Appellant City of Pontiac's Application for Leave to Appeal*, at 21. This Court has upheld a circuit court's decision to grant an injunction in aid of arbitration only in circumstances "where the power of an arbitrator to fashion a

remedy...might be frustrated in the absence of an injunction and where plaintiffs...have demonstrated irreparable harm in the absence of an injunction." *UAW Local 6000, supra,* at 508. "An injunction in aid of arbitration is appropriate, therefore, only when the actual or threatened harm to the aggrieved party amounts to a frustration or vitiation of arbitration." *Local Lodge No 1266 v Panoramic,* 668 F2d 276, 286 (CA 7 1981).

In a case such as the one at bar, where an arbitration award would consist of nothing more than back-pay and reinstatement from a solvent employer, a preliminary injunction is not appropriate, because it will not serve to assist the arbitrator in fashioning a remedy. In fact, where the issue before the grievance arbitrator is whether the layoff of a public employee was appropriate, the power of the arbitrator to fashion a remedy is frustrated in the *presence* of an injunction, because a preliminary injunction enjoining the layoff will unfairly tilt the table in favor of the plaintiff, or even de facto dispose of the dispute between the parties.

B. If a circuit court must grant preliminary relief, it must also order either an expedited arbitration or a temporally limited injunction.

In the rare instance where a circuit court may permissibly enjoin a breach of contract action that is subject to arbitration, the arbitration must be expedited. This Court recently emphasized the importance of expedited proceedings in cases where a preliminary injunction has been granted when it published an amendment to the Michigan Court Rules, which "would require trial courts to expeditiously decide actions in which preliminary injunctions have been granted." *Michigan Coalition of State Employee Unions, supra,* at 231. The recently amended court rule provides that:

> [i]f a preliminary injunction is granted, the Court shall promptly schedule a pretrial conference. The trial of the action on the merits must be held within 6 months after the injunction is granted, unless good cause is shown or the parties stipulate to a longer period. The Court shall issue its decision on the merits within 56 days after the trial is completed. MCR 3.310(A)(5).

The Michigan Court Rules demonstrate this Court's recognition that, because a temporary injunction is exactly what it purports to be – temporary – any action where a preliminary injunction is involved must be decided as rapidly as possible.

The "temporary" injunction in the present case has already lasted for over a year. The fact that a dispute is one that ultimately will be decided by an arbitrator should not alter the fact that a temporary injunction must in fact be temporary. Therefore, a temporary injunction granted in aid of arbitration must be coupled either with a court order that the arbitration be expedited or that the injunctive relief be limited in time.

The American Arbitration Association offers expedited services for labor disputes where speed is of the essence. *See* American Arbitration Association, *"Introductory Guide to AAA Arbitration and Mediation" available at* www.adr.org/si.asp?id=3932. An expedited labor arbitration hearing will be completed in one day, with an award rendered no later than seven days after the hearing. *See* American Arbitration Association, *"Labor Arbitration Rules."* (August 1, 2007). In the event that a preliminary injunction is granted in aid of an arbitration proceeding, this Court should order the matter to expedited arbitration, in order to ensure that the injunction remain as short-lived as possible.[2]

Alternatively, if the Court does not wish to require expedited arbitration proceedings, it should order that the temporary injunction be limited in time. At least one court granting a preliminary injunction in aid of arbitration has entered an injunctive order of very limited duration (i.e. 30 days or less), in order to put pressure on the parties to voluntarily expedite their

[2] Based on an 8/7/07 telephone conversation with a local American Arbitration Association Case Manager, an arbitration conducted under the expedited procedures can be expected to last, on average, between 2 and 6 weeks. This includes the time that is necessary to refer a case to arbitration, to appoint an arbitrator, to have the hearing, and to receive the award.

arbitration proceedings. *See, eg, Merrill Lynch, Pierce, Fenner & Smith, Inc., v Ran,* 67 F Supp2d 764 (ED Mich 1999).

V. A CIRCUIT COURT RARELY WILL HAVE JURISDICTION TO ENJOIN AN UNFAIR LABOR PRACTICE.

Although the circuit court abused its discretion when it granted a preliminary injunction in the instant dispute, there are limited circumstances where a circuit court may permissibly enjoin an alleged unfair labor practice. However, this Court has long held that "[i]t is basically contrary to the public policy in this state to issue injunctions in labor disputes absent a showing of violence, irreparable injury, or a breach of the peace." *Holland School District, supra,* at 326. In order to further the public policy of the state, this Court frequently has "cautioned against the issuance of labor injunctions." *Acorn Building Components v Local Union No 2194,* 164 Mich App 358, 365; 416 NW2d 442 (1987).

Although this Court has been hesitant to grant preliminary relief in the labor context, it does have jurisdiction to grant temporary relief in aid of a MERC proceeding. MCL 423.216 § 16(h) ("§ 16(h)") provides that and charging party (such as Plaintiff) or MERC may

> petition any circuit court within any circuit where the unfair labor practice in question is alleged to have occurred or where such person resides or exercises or may exercise its governmental authority, for appropriate *temporary* relief or restraining order, in accordance with the general court rules, and the court shall have jurisdiction to grant the commission or any charging party such temporary relief or restraining order as it deems just and proper. (emphasis added)

Read together, this Court's precedent and § 16(h) confer jurisdiction upon circuit courts to grant preliminary relief to enjoin an unfair labor practice, on the premise that the relief granted is *temporary*, that the alleged unfair labor practice will result in irreparable harm to the plaintiff, and that the plaintiff meets the other traditional prerequisites for a temporary injunction.

If a court grants a preliminary injunction in aid of a MERC proceeding, the plain language of the statute[3] dictates that the relief must be *temporary*. "Temporary" is defined as "lasting, existing, serving, or effective for a time only, not permanent."[4] It is difficult to believe that a preliminary injunction that has lasted over one year is indeed "temporary," especially when a *final* decision already would have been issued on the merits were this case pending in a Michigan court. *See* MCR 3.310(A)(5). The injunction in this case is potentially infinite, especially given the egregious fact that the circuit court ordered that the preliminary injunction remain effective until the parties complete 312 arbitration proceedings, when *none of the parties had even filed for Act 312 arbitration. Local 376 Pontiac Fire Fighters Union v City of Pontiac,* No. 06-075-367-CL (Oakland Cty Cir Ct June 30, 2006) (unpublished); *Local 376 Pontiac Fire Fighters v City of Pontiac,* Hearing Before the Honorable John J. McDonald, Circuit Judge (June 28, 2006). An injunction cannot possibly be "temporary" when its dissolution is premised on an event that is not certain to occur.

Even if the injunction in this case were actually temporary, a routine employee layoff does not trigger the extraordinary remedy of a preliminary injunction, because of the lack of irreparable harm. In the few cases where this Court has held that a preliminary injunction is appropriate to enjoin an alleged unfair labor practice, this Court has required that the plaintiff make a *concrete, particularized* showing that the unfair labor practice would become irrevocable

[3] Michigan law requires that the courts interpret statutes in a manner that gives effect to the legislature's intent. *Universal Underwriters Ins Group v Auto Club Ins Assoc,* 256 Mich App 541, 544; 666 NW2d 294, 296 (Mich App 2003). In order to determine legislative intent, the court looks to the specific language of the statute. *Halloran v Bhan,* 470 Mich 572, 577; 683 NW2d 129, 130 (Mich 2004). If the plain and ordinary meaning of the language is clear, judicial construction of the statute is both unnecessary and impermissible. *Nastal v Henderson & Assoc Investigations, Inc,* 471 Mich 712, 720; 691 NW2d 1, 5 (Mich 2005).

[4] Dictionary.com Unabridged (v 1.1). Random House, Inc. 31 Jul. 2007, *available at* http://dictionary.reference.com/browse/temporary.

and beyond the power of MERC to remedy in the absence of temporary injunctive relief. *UAW Local 6000, supra,* at 508. *See also Van Buren Public School Dist v Wayne Circuit Judge,* 61 Mich App 6; 232 NW2d 278 (1975); *Detroit Salaried Physicians Professional Ass'n,* 165 Mich App 142; 418 NW2d 679 (1987).

In *Van Buren,* one of the few cases where this Court has held that a preliminary injunction is appropriate in the context of an alleged unfair labor practice, an employer subcontracted the work of its union employees, without first negotiating the decision with the union representatives. *Van Buren, supra,* at 12. The union filed an unfair labor practice charge with MERC, alleging that the employer did not fulfill its duty to bargain about the subcontracting decision. *Id.* at 13. The Court found that a preliminary injunction was necessary to ensure that there was a remaining union with which the employer could bargain, since the employer's subcontracting decision was tantamount to an irrevocable elimination of the union itself. *Id.* at 16-17.

Although the Court in *Van Buren* was presented with an extraordinary factual situation which called for preliminary relief, the facts in this case present nothing more than a garden-variety layoff. Unlike the permanent subcontracting decision in *Van Buren,* the layoffs in the present dispute do not end an employment relationship. If MERC were to decide that the City breached a duty to bargain with the fire fighters with regard to the impact of the layoffs, the fact that a number of fire fighters have already been laid off clearly will not prevent the parties from bargaining, nor will it prevent the City from reinstating the laid off fire fighters if necessary.

Not only do labor disputes seldom raise issues of irreparable harm, granting temporary injunctive relief in public sector labor disputes often will be harmful to the public interest. Michigan jurisprudence has recognized that "the public interest would not be served by spending

taxpayer dollars to pay wages for employees while [a] prohibited-practice charge is pending, if, in fact, it is ultimately determined that the layoffs and transfers are not in violation of the collective bargaining agreement." *Alliance for Mentally Ill of Michigan, supra,* at 666. In this case, a financially struggling city has unnecessarily expended more than 2 million dollars, and continues to spend thousands of taxpayer dollars per week employing fire fighters whose right to active employment is problematic at best.

Moreover, a preliminary injunction in the context of a public sector labor dispute impairs a municipality's elected officials of their ability and duty to make discretionary budget decisions. *See Brown v Neeb,* 644 F2d 551, 563 (CA 6 1981) (finding that judges should not second-guess the budgetary decisions of elected officials who decide that it is necessary to lay off fire fighters). The circuit judge in this case substituted his own opinion for that of the duly elected mayor of the City when he stated that: "[t]he Court finds that keeping the number of fire fighters and fire station houses the same as it is now will only serve to benefit the public and it trusts that the other budgetary cut backs that [the City] may make alternative [sic] will not endanger the public." *Local 376 Pontiac Fire Fighters Union v City of Pontiac,* No. 06-075-367-CL, slip op at 3 (Oakland Cty Cir Ct June 30, 2006) (unpublished). The circuit judge did not possess the discretion to usurp the power of an elected official, simply because he believed that different budget cutbacks would have been more appropriate. Because it is the public who elects the officials who possess the authority and discretion to make budgetary decisions, it is not in the public interest for a judge to decide what fiscal decisions are the most appropriate for a city.

A. A circuit court must exercise special caution in granting preliminary relief in the context of an unfair labor practice charge.

Because MERC has exclusive jurisdiction over an unfair labor practice charge, a circuit court is especially limited in the circumstances under which it may grant a preliminary injunction

in a labor dispute. A preliminary injunction may only issue if it has the effect of aiding MERC's jurisdiction. Conversely, a preliminary injunction may not issue if it will frustrate or impede MERC's jurisdiction. *Van Buren, supra,* at 14.

In deciding whether a preliminary injunction would aid or oppose MERC's jurisdiction, it is necessary to ascertain the question that will be before MERC at the hearing. *See Id.,* at 16. In *Van Buren*, the issue before MERC was whether the parties had a duty to bargain regarding the subcontracting decision. Because the public employer's decision to subcontract eliminated the union, a preliminary injunction was necessary to aid MERC's jurisdiction in being able to afford an effective remedy. As illustrated by *Van Buren,* a circuit court may only grant an injunction in aid of MERC's jurisdiction if the traditional factors for a preliminary injunction are met, *and* if the absence of a preliminary injunction would render the MERC hearing moot, effectively stripping MERC of its jurisdiction to decide the issue in controversy.

In a layoff case such as the one at bar, it will rarely be appropriate for a circuit court to grant a preliminary injunction in aid of MERC's jurisdiction. Where a portion of a solvent public employer's workforce has been laid off, there is absolutely no danger that MERC will be unable to render an enforceable order that the parties have a duty to bargain regarding the impact of the layoffs. Such a layoff does not eliminate the union, and it is entirely revocable. If MERC were to rule that the parties must bargain, they can bargain, without the "aid" of the circuit court's "temporary" injunction. Likewise, if MERC were to rule that the layoffs were improper, the City could simply reinstate the fire fighters with back-pay.

B. If a circuit court must grant preliminary relief, it must also order an expedited MERC hearing.

In the rare event that a circuit court enjoins a labor dispute in aid of MERC's jurisdiction, it is necessary that the MERC hearing be expedited, in order to ensure that the temporary injunction is, in fact, temporary. Years can elapse between the filing of an unfair labor practice charge and a MERC decision. Of the MERC decisions that were issued in June 2007 (the last month for which the opinions are available), the average time between the unfair labor practice charge and a decision was 592 days.[5] A preliminary injunction that lasts for several years during the pendency of a MERC hearing certainly may not be deemed "temporary relief." In fact, the MERC action in this case has been pending for 14 months, *City of Pontiac v Pontiac Fire Fighters Union, Local 376,* MERC Hearing (Nov. 21. 2006), which is a longer period of time than a court is permitted in issuing a final decision in a case where a preliminary injunction has issued. *See* MCR 3.310(A)(5).

Although MERC is not statutorily compelled to conduct an expedited hearing in cases where a preliminary injunction has issued, this Court may, and should, order that an expedited hearing occur. In fact, it appears as if the *Van Buren* court did order an expedited hearing. In *Van Buren,* MERC issued a final ruling fewer than five months after the circuit court granted its preliminary injunction. An expedited MERC hearing would be consistent with the legislative intent of § 16(h), as evidenced by the plain language of the statute. Without an expedited hearing, the plain meaning of § 16(h) will be ignored.

[5] This does not include claims that were summarily dismissed for procedural defectiveness (e.g., facially defective claims).

RELIEF REQUESTED

For the foregoing reasons, the decision of the Court of Appeals should be reversed, the preliminary injunction should be vacated, and the City of Pontiac should be allowed to implement its layoffs until a grievance arbitrator or MERC administrative judge rules otherwise.

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Dated: August 9, 2007

COPY

STATE OF MICHIGAN
IN THE SUPREME COURT

Appeal from the Michigan Court of Appeals

PONTIAC FIRE FIGHTERS UNION
LOCAL 376

Plaintiff-Appellee, Supreme Court No. 132916

v.

CITY OF PONTIAC

Defendant-Appellant.

PROOF OF SERVICE

Pamela L. Baker, an employee of Dykema Gossett PLLC, certifies that on August 9, 2007, she caused to be served copies of a *Brief of Amici Curiae the Michigan Municipal League and the Michigan Association of Counties in Support of Defendant-Appellant* along with this *Proof of Service*, via U.S. Mail to the following individuals at the addresses listed below.

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Subscribed and sworn to this 9th day of August, 2007.

Dawn R. Gann
Notary Public
Acting Washtenaw County, MI
My Commission Expires:

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County of Livingston
My Commission Expires June 24, 2011
Acting in County of Washtenaw