

**STATE OF MICHIGAN  
IN THE SUPREME COURT**  
Appeal from the Michigan Court of Appeals

**PONTIAC FIRE FIGHTERS UNION  
LOCAL 376,**

Plaintiff - Appellee,

v.

**CITY OF PONTIAC,**

Defendant-Appellant.

**Supreme Court Docket No: 132916**

**Court of Appeals No: 271497**

**Oakland County Circuit Court  
No: 06-075367-CL**

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**BRIEF OF AMICUS CURIAE MICHIGAN STATE AFL-CIO  
IN SUPPORT OF PLAINTIFF-APPELLEE  
PONTIAC FIRE FIGHTERS UNION LOCAL 376**



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## STATEMENT OF THE QUESTIONS PRESENTED

- I. Did the circuit court have jurisdiction to issue an injunction preventing the employer from implementing layoffs pending arbitration of the issue of whether those layoffs violated the collective bargaining agreement?

The circuit court held that the answer is, "Yes."

The court of appeals held that the answer is, "Yes."

The Plaintiff-Appellee contends that the answer is, "Yes."

Amicus Curiae Michigan State AFL-CIO contends that the answer is, "Yes."

Defendant City of Pontiac contends that the answer is, "No."

Amicus Curiae Michigan Municipal League and the Michigan Association of Counties will contend that the answer is, "No."

- II. Did the circuit court have jurisdiction to issue an injunction preventing the employer from implementing layoffs pending resolution by the Michigan Employment Relations Commission of a charge contending that the layoffs were an unfair labor practice in violation of the Public Employment Relations Act?

The circuit court held that the answer is, "Yes."

The court of appeals held that the answer is, "Yes."

The Plaintiff-Appellee contends that the answer is, "Yes."

Amicus Curiae Michigan State AFL-CIO contends that the answer is, "Yes."

Defendant City of Pontiac contends that the answer is, "No."

Amicus Curiae Michigan Municipal League and the Michigan Association of Counties will contend that the answer is, "No."

## INTRODUCTION

On June 15, 2007, the Court granted leave in this matter and directed the parties to include among the issues to be briefed, "(1) whether the circuit court had jurisdiction to grant a preliminary injunction with respect to the breach of contract claim (Count I) and the unfair labor practice claim (Count II). . . ." The Court also directed briefing on the issue of whether, if the circuit court had jurisdiction, it had abused its discretion in issuing an injunction. On the same date, the Court directed that supplemental briefs be filed in the case of ***Detroit Fire Fighters Association, I.A.F.F. Local 344 v City of Detroit***, Case No. 131463, and directed that those briefs address jurisdictional issues, specifically whether the circuit court has jurisdiction to enforce section 13 of Act 312, MCL 423.243, and also whether the Michigan Employment Relations Commission has primary jurisdiction to enforce section 13. In both cases, the Court invited amicus curiae briefs from the Michigan Municipal League, the Michigan Association of Counties, Michigan AFSCME Council 25, and the Michigan State AFL-CIO.

We are filing this brief to address the jurisdictional issues raised by the Court, and will repeat here the arguments made in our brief in the ***Detroit Fire Fighters Association*** case, which demonstrate that a circuit court clearly has jurisdiction to issue an injunction, both to enjoin a breach of contract and to enjoin an unfair labor practice. We will leave the question of whether the circuit court properly exercised its discretion in issuing the injunction to the Plaintiff, Pontiac Fire Fighters Union Local 376.

## ARGUMENT

**THE CIRCUIT COURT HAS JURISDICTION TO ENJOIN A BREACH OF CONTRACT PENDING ARBITRATION AND TO ENJOIN AN UNFAIR LABOR PRACTICE PENDING A MERC HEARING AND DECISION ON THAT ULP.**

**A. The Michigan Constitution gives the circuit court jurisdiction over all matters not prohibited by law.**

Article 6, § 13 of the Michigan Constitution of 1963 provides that, "The circuit court shall have original jurisdiction in all matters not prohibited by law . . . , " and, in determining whether a statute prohibits circuit court jurisdiction, this Court has said: "The divestiture of jurisdiction from the circuit court is an extreme undertaking. Statutes so doing are to be strictly construed. Divestiture of jurisdiction cannot be accomplished except under clear mandate of the law." *Wikman v Novi*, 413 Mich 617, 645 (1982).

**B. Nothing prohibits the circuit court from exercising jurisdiction to enjoin a breach of contract pending arbitration.**

The injunction in the instant action was issued to preserve the status quo pending arbitration of the dispute. The issuance of an injunction for such a purpose is well recognized and courts have held that such injunctions are warranted where the actions of the employer are such that an arbitrator would be unable to issue an award which would effectively remedy the alleged contract violation. *Lever Brothers v Chemical Workers Local 217*, 554 F2d 115 (CA 4 1976); *Auto Workers v Dana Corp*, 679 F2d 634 (CA 6).

There is nothing in any Michigan statute which would deprive the circuit court of this traditional equity jurisdiction.

C. **Nothing prohibits the circuit court from exercising jurisdiction to enjoin an unfair labor practice and, in fact, the statute explicitly authorizes such an injunction.**

In *Van Buren Sch Dist v Circuit Judge*, 61 Mich App 6 (1975), the court of appeals considered whether the circuit court had jurisdiction to enjoin an alleged unfair labor practice pending MERC resolution of ULP charge, where the injunction was sought by a labor union which had filed an unfair labor practice against the school district's unilateral decision to terminate all of its bus drivers and subcontract its bus service . At the time, as the court noted, section 16(h) of the PERA, MCL 423.216(h), provided:

The board shall have power . . . to 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 board such temporary relief or restraining order as it deems just and proper.

The defendant argued that MERC's exclusive jurisdiction over unfair labor practices limited the traditional equity jurisdiction of the courts. The court rejected that argument, stating that it was clearly unsupported by the statute. Next the defendant argued that because the statute specifically empowered MERC to seek an injunction only MERC could do so. The court rejected that argument, holding that by empowering MERC the legislature did not deprive others of their ability to seek and obtain injunctive relief.

Shortly thereafter, the legislature amended section 16(h) of PERA, essentially incorporating the *Van Buren* holding into the statute, which now reads:

The commission *or any charging party* shall have power . . . to petition any 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." (Emphases added.)

It is, thus, absolutely clear that the circuit court had jurisdiction to enjoin the layoff

of fire fighters pending the resolution of an unfair labor practice contending that that action violated the Public Employment Relations Act.

**CONCLUSION**

For the reasons set forth above, amicus curiae Michigan State AFL-CIO submits that the Court should find that the circuit court had jurisdiction to issue an injunction enjoining layoffs pending arbitration of the issue of whether those layoffs violated the collective bargaining agreement, and that it also had jurisdiction to issue the injunction enjoining the layoffs pending resolution by the Michigan Employment Relations Commission of an unfair labor practice charge alleging that these layoffs violated the PERA.

Respectfully submitted,

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