

STATE OF MICHIGAN

IN THE SUPREME COURT

Appeal from the Michigan Court of Appeals

DETROIT FIRE FIGHTERS ASSOCIATION
I.A.F.F. LOCAL 344,

Plaintiff-Appellee,

Supreme Ct. No. 131463
Court of Appeals No. 266654
Circuit Ct. No. 05-526691-CL
HON. SUSAN D. BORMAN

v.

CITY OF DETROIT,

Defendant-Appellant.

**AMICUS CURIAE BRIEF OF THE DETROIT POLICE OFFICERS
ASSOCIATION IN SUPPORT OF PLAINTIFF-APPELLEE**

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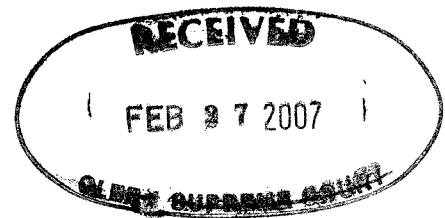


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COUNTER-STATEMENT OF QUESTIONS PRESENTED

1. Should the Supreme Court deny the City's appeal and affirm the Court of Appeals' opinion upholding Section 13 of Act 312 M.C.L. 423.243 which prohibits a change in the existing wage, hours and conditions of employment during the pendency of Act 312?

The City of Detroit would answer: No

The Detroit Fire Fighters Association would answer: Yes

The Court of Appeals would answer: Yes

The Trial Court would answer: Yes

Amicus Curiae the Detroit Police Officers Association would answer: Yes

2. Must a *status quo* injunction issue pursuant to Section 13 of Act 312 M.C.L. 423.243 when the City of Detroit attempted to change existing wages, hours and conditions of employment during the pendency of Act 312 proceedings?

The City of Detroit would answer: No

The Detroit Fire Fighters Association would answer: Yes

The Court of Appeals would answer: Yes

The Trial Court would answer: Yes

Amicus Curiae The Detroit Police Officers Association would answer: Yes

3. Whether irreparable injury *per se* exists when an employer changes existing wages, hours and conditions of employment during the pendency of Act 312 proceedings?

The City of Detroit would answer: No

The Detroit Fire Fighters Association would answer: Yes

The Court of Appeals would answer: Yes

The Trial Court would answer: Yes

Amicus Curiae The Detroit Police Officers Association would answer: Yes

STATEMENT OF FACTS AND PROCEEDINGS

Amicus curiae Detroit Police Officers Association (“DPOA”) defers to Plaintiff Appellee Detroit Fire Fighters Association (“DFFA”) statement of facts and proceedings. A comprehensive recitation of the factual background is unnecessary because the following facts squarely establish the propriety in awarding injunctive relief pursuant to Act 312, preventing the City from implementing the restructuring plan and laying off firefighters before coming to an agreement with the DFFA. See MCLA §423.231 et. seq.

- DFFA and the City of Detroit (“City”) were/are parties to a collective bargaining agreement which was ongoing and in effect at the time the complained of action occurred.
- The parties were in the midst of compulsory arbitration pursuant to Act 312 when the City proposed to implement its restructuring/layoff plan (hereafter “Plan”).
- The Plan disturbed the *status quo* because it altered existing wages, hours and conditions of employment enumerated in the collective bargaining agreement.
- The Plan was inextricably intertwined with safety: (1) 65 fire fighters would be laid off; (2) job duties would shift from battalion chiefs to subordinate “senior officers at a scene” for “garden variety fires”; (3) fire fighters would be “crossed train as [medical] first responders to help ease the backlog of work for emergency medical personnel”; (4) Fire Commissioner Scott admitted in his prepared *Budget reduction impact and reorganization* report that the plan was predicated on fire fighter safety and noted that there had been a 28% increase in dwelling fires in 2004. See Plaintiff-Appellee Brief in Opposition to Defendant-Appellant’s Application for Leave to File Appeal Exhibit 5. Commissioner Scott’s report likewise noted that fire fighter layoffs would increase fire fighter injuries, increase response times which would

increase the risk to citizen lives and property loss. See Plaintiff-Appellee DFFA brief, pp. 2-3.

The Trial Court and Court of Appeals correctly applied the appropriate injunctive legal standard when it enjoined the City from implementing its Plan. Because the parties were engaged in Act 312 compulsory arbitration, and the Plan disturbed the working condition *status quo*, injunctive relief was statutorily mandated.

ARGUMENT

I. THIS COURT MUST APPLY THE EXPRESS LANGUAGE OF ACT 312

The critical issue presented in the City’s appeal is purely one of statutory construction, specifically construction of Section 1 and Section 13 of Act 312. See MCL 423.231 and 423.243. Where, as here, the dispositive issue turns upon the interpretation and application of statutory language “the statutory language must be read and understood in its grammatical context, unless it is clear that something different was intended.” *Shinholster v. Annapolis Hosp.*, 471 Mich. 540; 685 N.W.2d 275 (2004). Or as this Court noted in *People v. Toombs*, 472 Mich. 446; 697 N.W.2d 494 (2005) “where unambiguous statutory language exists the legislature is deemed to have intended the meaning clearly expressed leaving the Court no option but to enforce the statute as written”. *Id.* at 451. Statutory construction analysis, such as is required in this case, precludes an interpretation beyond the written word. On this point the Court has held that “nothing may be read into a statute that is not within the manifest intent of the Legislature.” See *Omne Fin. Inc. v. Shacks Inc.*, 460 Mich. 305; 596 N.W.2d 591 (1999).¹ Applying the foregoing precedent to the

¹ It is for this reason that Amicus Curiae Iron Mountain’s analysis is erroneous. This Court must decline Iron Mountain’s invitation to read behind the statute’s plain language. To do otherwise would have this Court legislate meaning not intended nor expressly written in the statute.

case at bar it is clear that the Trial Court and Court of Appeals correctly issued injunctive relief because the decision was consistent with the plain and unambiguous language of Act 312.

In this case, two sections of Act 312 are implicated, Section 1 and Section 13. See MCL §423.231 and 423.243. Section 1 provides the public policy underlying the Act:

It is the public policy of the state that in public police and fire departments, the right of employees to strike by law is prohibited, it is requisite to the high morale of such employees and the efficient operation of such departments to afford an alternate, expeditious, effective and binding procedure for the resolution of disputes, and to that end the provisions of this act, providing for compulsory arbitration, shall be liberally construed.

See MCLA §423.231 (emphasis added). The express language of Section 1 crystallizes the Legislature's intent, that each section of the act is to be "liberally construed". For purposes of this appeal, the statute requires a liberal construction of Section 13, and in particular the phrase "wages, hours and conditions of employment".

Section 13 enumerates the conditions triggering injunctive relief. Section 13 clearly and unambiguously enumerates those conditions that justify the issuance of injunctive relief:

During the pendency of proceedings before the arbitration panel, existing wages, hours and other conditions of employment shall not be changed by action of either party without the consent of the other but a party may so consent without prejudice to his rights or position under this act.

See MCLA 423.243 (emphasis added). The plain language of Section 13 leaves no room for interpretation. Injunctive relief is mandatory where: (1) Act 312 proceedings are ongoing; and (2) unilateral action will "change" existing wages, hours and conditions of employment.

Analyzing Defendant-Appellant's appeal is limited to determining whether Act 312 proceedings were pending. If so, analysis turns on whether the City's Plan would "change"

existing wages, hours and conditions of employment. Contrary to the Defendant-Appellant's suggestion, this Court "may read nothing more" into the aforementioned language.

1. Act 312 proceedings were pending

The statute's first condition is met as both the City and DFFA acknowledge Act 312 proceedings were pending when the Plan was to be implemented. No weight should be given to Defendant-Appellant's request for relief from Act 312's express language on the basis that proceedings were close to concluding.² The explicit language of Section 13 merely requires "pending" "proceedings". Whether the parties were beginning, in the middle of or coming to the conclusion of 312 "proceedings" is of no consequence. Because the exception sought by Defendant-Appellant is not provided in the statute it does not exist, and cannot support Defendant-Appellant's appeal.

2. The Plan "changed" existing wages, hours and conditions of employment

Applying the strict statutory construction principles enunciated by this Court in *Shinholster, Toombs* and *Omne*, supra, leads to the inescapable conclusion that the Plan would change existing wages, hours and conditions of employment. The phrase "wages, hours and conditions of employment" has been liberally defined by Michigan courts and historically linked to "mandatory subjects of bargaining". See *Detroit Police Officers Association v. City of Detroit*, 391 Mich. 44, 54; 213 NW 2d 803 (1974); *Southfield Police Officers Assn v. City of Southfield*, 433 Mich. 168; 445 NW 2d 98 (1989) *Local 1393, International Assn of Firefighters, AFL-CIO v.*

² Assuming *arguendo* that Section 13 could be read to permit changes to the *status quo* so long as the proceedings were nearing the end, Defendant-Appellant's claim still fails. Plaintiff-Appellee asserts proceedings are nowhere closer to concluding today than when it filed its original Complaint for injunctive relief on September 12, 2005. Moreover, the City conceded to the Trial Court that proceedings were pending. See Plaintiff-Appellee Brief in

City of Warren, 411 Mich. 642, 652 (1981). If a subject requires mandatory bargaining an Employer is prohibited from unilaterally acting. When a public safety unit is involved and Act 312 proceedings are pending MCLA 423.231 provides the added protection of *status quo* maintenance backed up by injunctive relief. Subjects such as “staffing levels, hourly rates of pay, overtime pay, shift differentials, holiday pay, pensions, no-strike clauses, profit sharing plans, grievance procedures, work rules, seniority and promotion and management right clauses” have been identified as mandatory subjects of bargaining. See *City of Detroit v. Detroit Firefighters Association*, 204 Mich. App. 541, 553 (1994); *Ipsheiming Supervisory Employees v. City of Ipsheiming*, 155 Mich. App. 501, 509 (1986). In this case the Plan “changes” existing wages, hours and conditions of employment because it reduces staffing levels thereby creating unsafe working conditions.

Both the Trial Court and Court of Appeals correctly concluded that the Plan’s impact “changed” existing wages, hours and other conditions of employment because “proposed layoffs and restructuring may impact the safety of working conditions for firefighters”. See Plaintiff-Appellee Brief in Opposition to Defendant-Appellant’s Application for Leave to Appeal Exhibit 12. A decrease in line staffing strength, coupled with an increase in dwelling fires is a combustible combination. The Court of Appeals accepted the testimony taken at the Trial Court which confirmed that the Plan would have spawned a multitude of “safety” concerns:

...response times to fires would be affected, safety concerns pertaining to firefighters having to travel greater distances to fire scenes, the potential for increased risk where these delays exacerbated the fires, the impact on availability of personnel to meet the four-person-per rig mandate, and the requirement that less-

senior officers would manage fire scenes because of the reduction in the number of battalion chiefs and their duty assignments.

See Court of Appeals Opinion at 2. The aforementioned finding is proof positive that the Court of Appeals found firefighter staffing and safety to be inextricably intertwined. Ergo the Plan significantly touched on a mandatory subject of bargaining which required strict maintenance of the *status quo* because Act 312 proceedings were pending.

The Court of Appeals correctly determined that the Plan created unsafe working conditions. The Court of Appeals' finding is consistent with well established precedent. Where staffing levels are "related to" or "inextricably intertwine" with safety it is a mandatory subjects of bargaining. See *City of Detroit v. Detroit Fire Fighters Association*, 204 Mich. App. 541,553 (1994) ("it is well established that where a staffing issue is related to or inextricably intertwined with the safety of the unit member, the issue is subject to mandatory bargaining"); *Manistee v. Manistee Fire Fighters Association*, 174 Mich. App. 118 (1989) ("where staffing requirement is related to safety it becomes a mandatory subject of bargaining"). The aforementioned case authority stands for the proposition that where an issue, such as staffing, relates to safety, it is a mandatory subject of bargaining.

The Plan would change existing wages, hours and conditions of employment in various ways. Delaying response time results in an increased risk to firefighter safety—the delay allows the fire to grow and intensify. Reducing staffing levels would also increase risk because the four-person-per rig staffing requirement would be nullified. The four-person-per rig staffing mandate is a minimum manning requirement. Minimum manning requirements are safety requirements created for the express purpose of identifying and recognizing the minimum number of personnel

needed to safely perform the job. Thus, where, as here, minimum manning levels are reduced, safety concerns automatically arise. In this case, the Plan would reduce the minimum staffing requirement from four to three. Abrogation of the minimum staffing levels was driven solely by financial reasons, as opposed to safety concerns.

It is noteworthy that Defendant-Appellant did not assert, nor can the record support a finding that a breakthrough in firefighting technique, equipment or some other reason would make it safer to fight fires with three versus four man rigs. Because the Plan would reduce staffing levels, it created unsafe conditions and in turn would have changed the existing wages, hours and conditions of employment.

Wages would likewise be changed because firefighters would be doing more, without a corresponding increase in salary. Contractual wage structures are based on workload and assignment.³ Job difficulty and workload dictate wage structure. In this case, the contract in effect contained a wage structure predicated on a staffing level that included the proposed 65 laid off firefighters. Because wages are directly tied to staffing levels, a change in staffing automatically changes existing wages, hours and conditions of employment.

Additionally, the fundamental repudiation of the firefighter job classification represents another significant “change”. Job responsibilities once held by Battalion Chiefs at “garden variety fires” would be reassigned to Senior Officers. Moreover the firefighter job classification would be fundamentally “changed” with the addition of medical responder duties. Again, firefighters would assume a greater workload without a corresponding increase in wages. Firefighter “wages, hours

³ Obvious examples are pay variations in promoted ranks, overtime, holiday pay etc.

and conditions of employment” are defined by and locked in place for the duration of the contract then in effect. In this case, the contract in effect did not include the assignment of medical responder functions. Rather the contract limited firefighters to performing firefighting exclusively not medical responder duties. Adding a new job responsibility, particularly one as significant as medical responder, is a *per se* change in employment conditions because pre-Plan “employment conditions” prohibited medical response functions. By changing the firefighter job classification, the City automatically changed wages and hours because, as described above, workload and job assignment are inextricably linked to wages and hours. Since the Plan would produce a seismic change in job assignment, it would have changed wages, hours and conditions of employment.

A reduction in firefighting staffing levels would change the “wages, hours and conditions of employment” for the remaining firefighters. Reducing the workforce would result in a concomitant increase in workload for those firefighters still working as they would be forced to assume the work previously assigned to the 65. An increased workload is a near certainty given the 28% increase in dwelling fires in 2004. Increasing the workload would in turn place an extreme burden on firefighters left behind. Commissioner Scott readily acknowledged as much when he noted in his report that cuts in firefighters would result in their injury as well as expose the public to greater harm. See Exhibit 5 of Appellee’s Brief in Opposition to Appellant’s Application for Leave to Appeal.

Finally, for those 65 members targeted for layoff, their existing wages, hours and conditions of employment would “change” since there would literally be no more wages, hours or employment conditions. “Conditions of employment” would cease to exist for those laid off. By proposing a Plan that “changed” firefighter “wages, hours and conditions of employment” during

the pendency of Act 312 proceedings, the Trial Court and Court of Appeals had no choice but to issue injunctive relief.

II. ***STATUS QUO* INJUNCTIONS UNDER §13 OF ACT 312 ARE NOT GOVERNED BY THE TRADITIONAL EQUITABLE STANDARDS**

Michigan courts have unequivocally held that Act 312 injunctive relief is not guided by traditional equitable standards. Rather, as detailed above, injunctive relief must issue if the *status quo* has been upset. The Court of Appeals in *Detroit Police Officers Association v. City of Detroit*, 142 App. 248, 252-53 (1985) articulated in no uncertain terms this rigid standard:

“[We] think that a showing of irreparable injury is not required before the instant status quo injunction may issue, particularly because the question before us is concerned with far more than the private rights and duties of the parties... the public interest in the peaceful settlement of labor disputes through the utilization of statutory procedures is also involved, and irreparable injury to the complaining party is not an element which bears significantly or relevantly on the furthering of the public interest.”

Id at 253. This Court denied the City’s Application for Leave to Appeal thereby affirming the Appellate Court’s decision. See *id.* Essentially the Court of Appeals found that the Act’s heightened public interest carries with it an automatic finding of irreparable injury whenever a “change” to *status quo* occurs. Changing the *status quo* is an irreparable injury because a contrary finding would disembowel the Act’s delicate labor balance. Public safety bargaining units were stripped of their right to strike in exchange for a guarantee that existing wages, hours and working conditions would be maintained with no change during the pendency of Act 312 proceedings.

Act 312 was promulgated for the express purpose of insuring statewide labor stability. To achieve this objective the legislature struck the proper balance between the need of public safety employees to collectively bargain against the need of municipal employers to protect and serve its

citizenship. Act 312 accomplishes this goal: public safety units relinquished their right to strike while employers relinquished their right to act unilaterally. Altering the Act's fundamental *quid pro quo* arrangement would disturb the balance of public safety labor harmony. And it is for this reason that "change" to the *status quo* is per se irreparable injury.

Irreparable injury is also found in the Plan itself. The Plan's impact on firefighter safety establishes the necessary irreparable injury. Reducing manpower at a time when dwelling fires are increasing presents a real and imminent threat to the safety of firefighters. Increasing the chances of injury and death to firefighters undoubtedly qualifies as irreparable injury.

III. THIS COURT MUST REJECT THE CITY'S ATTEMPT TO EVISCERATE ACT 312

Defendant-Appellant's appeal is fundamentally flawed since it seeks relief from Act 312's clear mandate through statutory exceptions that do not exist. The statute does not provide any exceptions to the prohibition against changing existing wages, hours and working conditions. Section 13 plainly and unambiguously states conditions of employment "shall not be changed". Exigent circumstances, such as financial considerations, have no place in Section 13 analysis. See MCLA 423.243

The Michigan Employment Relations Commission (hereafter "Commission") has squarely rejected this precise argument. In *Wayne County Bd. of Commissioners*, 1985 MERC Lab Op. 1037 the Commission held that even a bona fide financial crisis does not justify an Employer's repudiation of its contractual obligations. See also *Jonesville Bd. of Education, City of Detroit*, 1984 MERC Lab Op. 937, aff'd 150 Mich. App. 605 (1985). Thus, the City's plea that its "severe financial crisis" excuses its obligation to maintain the *status quo* is without merit, contradicting

both the statute and well established authority. As this Court has consistently held, it is obligated to enforce the statute “as written”. As written Section 13 does not allow an Employer to evade its requirement to maintain the *status quo* for any reason including “financial crisis”.⁴

Equally unpersuasive is Defendant-Appellant’s attempt to distinguish between contractual and factual *status quo* in order to evade Section 13's unambiguous ban on change. Defendant-Appellant’s factual/contractual *status quo* assertion is untethered to the statute and case authority—neither articulate such a distinction. In short, it is an incomprehensible argument lacking legal underpinnings. Moreover, and as previously outlined, Section 13 contains no “gray” areas, nor exceptions to the general rule. Despite the plain and clear statutory language, Defendant appeals for judicial intervention. This Court has uniformly rejected all such requests and must do so herein. See *Shinholster* supra. Defendant is bound by the explicit language contained in Act 312 i.e. during the pendency of Act 312 proceedings all existing wages, hours and conditions of employment are not to be changed. Because the DFFA and City were in Act 312 proceedings when the City tried to change existing wages, hours and conditions of employment, injunctive relief was required and appropriately provided.

⁴ This only makes sense. To hold otherwise would invite judiciary intervention to referee labor relation

CONCLUSION

For the foregoing reasons, amicus curiae Detroit Police Officers Association respectfully requests that this Court affirm the decision of the Court of Appeals.

Respectfully submitted,
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Dated: February 25, 2007

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disputes involving the existence of a “severe financial crisis”. The Act 312 Panel, not the judiciary possesses exclusive jurisdiction over such disputes.