

Court of Appeals, State of Michigan

ORDER

Michigan AFSCME Council 25 v County of Wayne

Docket No. 298832

LC No. 10-007242-CL

Cynthia Diane Stephens
Presiding Judge

Brian K. Zahra

Kirsten Frank Kelly
Judges

On September 23, 2010, the Michigan Supreme Court vacated this Court's order of September 2, 2010, and remanded the matter to us "for reconsideration or clarification" in light of an order issued by the Wayne County Circuit Court on September 9, 2010. The Court also suggested that we consider whether relief at this point is moot in view of the fact that the layoff periods have passed.

First, clarification of this Court's September 2, 2010 order is required in light of the lower court's September 9, 2010, order, which indicated that this Court reversed its preliminary injunction entered on June 25, 2010. This Court's order contained a statement from Judges Zahra and Kelly that they "would reverse," but given the absence of unanimity, see MCR 7.211(C)(4), they concurred in the order signed by Presiding Judge Stephens, which vacated the preliminary injunction due to the lower court's failure to address whether the availability of COBRA to the county employees mitigated any irreparable harm and whether consideration financial hardship constituted the type of harm that is not the proper subject of injunctive relief under *Pontiac Firefighters Union Local 376 v City of Pontiac*, 482 Mich 1; 753 NW2d 595 (2008). This Court's order also remanded the matter for further proceedings. Accordingly, the lower court's belief that no further action was required was erroneous.

Second, due to the fact that the Supreme Court vacated this Court's prior order, this Court must issue an order resolving the application filed by Wayne County. Because the layoff periods have passed, relief from the lower court is no longer available. As a result, this Court now orders that the application for leave to appeal is DENIED AS MOOT. See *In re Contempt of Dudzinski*, 257 Mich App 96, 112; 667 NW2d 68 (2003). Action from the lower court is no longer required.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

OCT 27 2010

Date

Sandra Schultz Mengel
Chief Clerk