STATE OF MICHIGAN

COURT OF APPEALS

MICHIGAN STATE EMPLOYEES ASSOCIATION,

Plaintiff-Appellant,

v

DEPARTMENT OF CORRECTIONS,

Defendant-Appellee.

UNPUBLISHED
August 12, 1997

No. 201099
Ingham Circuit Court
LC No. 96-085111-CZ

Before: Corrigan, C.J., and Markey and Markman, JJ.

PER CURIAM.

Plaintiff Michigan State Employees Association [MSEA] appeals as of right from the denial of its request for injunctive relief. We affirm and dissolve the stay imposed by this Court on February 3, 1997.

Before filing a grievance against defendant Department of Corrections [DOC] over the alleged transfer of personal service contracts from the union members to outside contractors, plaintiff filed this suit in an attempt to halt the closure of a DOC warehouse facility, claiming that defendant acted unconstitutionally and in violation of Civil Service Commission rules when it contracted with outside vendors to supply food and other goods to fourteen DOC camps throughout the state. Prior to the contract, the vendors delivered supplies to the warehouse, and MSEA members transported the supplies to the camps. The trial court initially ordered a temporary restraining order but subsequently denied plaintiff's request for an injunction, finding that plaintiff had failed to establish either irreparable harm to its members in the absence of the injunction or the likelihood that plaintiff would prevail on the merits. We affirm.

In *MSEA v Dep't of Mental Health*, 421 Mich 152, 157-158; 365 NW2d 93 (1984), our Supreme Court set forth the following four-part test for determining whether a preliminary injunction should issue:

> [1] [the] harm to the public interest if an injunction issues; [2] whether [the] harm to the applicant in the absence of a stay outweighs the harm to the opposing party if a stay is granted; [3] the strength of the applicant's demonstration that the applicant is likely to prevail on the merits; and [4] [a] demonstration that the applicant will suffer irreparable injury if a preliminary injunction is not granted. [Footnotes omitted.]

Accord *Senior Accountants, Analysts & Appraisers Ass'n v Detroit*, 218 Mich App 263, 269; 553 NW2d 679 (1996). Whether an injunction should issue will often include consideration of whether the applicant has access to an adequate legal remedy. *MSEA, supra* at 158. Indeed, we are mindful that "[a]n injunction represents an extraordinary and drastic act of judicial power that should be employed sparingly and only with full conviction of its urgent necessity." *Senior Accountants, Analysts & Appraisers Ass'n, supra.* We review the grant or denial of an injunction for an abuse of discretion. *Id.*

In *Davies v Treasury Dep't*, 199 Mich App 437, 440; 502 NW2d 693 (1993), this Court held that Treasury Department employees subject to layoff due to a state government fiscal crisis had not made the requisite showing of irreparable harm because the injuries alleged were "all economic injuries that, though serious, do not justify an injunction because they can always be remedied by damages at law pending a decision on the merits of the complaint filed." See also *Acorn Bldg Components, Inc v UAW Local 2194*, 164 Mich App 358, 366; 416 NW2d 442 (1987). Moreover, in *Davies*, unlike the case at bar, the terms of the collective bargaining agreement did not allow employees in that division of the Treasury Department to "bump" less senior employees in other divisions in the event of layoff and preserve their job security. *Id*. at 438.

The panel in *Davies*, *supra* at 440, also noted that "only three plaintiffs [out of twelve] submitted affidavits detailing their damages." The type of damages alleged included the plaintiffs' inability to make mortgage payments, pay rent or afford counseling. *Id.* This Court stated that such economic injuries "do not justify an injunction because they can always be remedied by damages at law pending a decision on the merits of the complaint filed." *Id*., citing *Acorn Bldg Components*, *supra* at 366.

In the instant case, no affidavits were submitted. Moreover, plaintiff failed to identify in its complaint any damages that its members will allegedly suffer as a result of the warehouse closure; the complaint stated only that "nine positions held by MSEA members will be eliminated." Defendant introduced the affidavit of Marsha Foresman, Special Assistant to the Director of the Department of Corrections, who averred that "of the six MSEA Department of Corrections Camp Warehouse employees affected by the proposed closing of the camp warehouse, all have been notified that they may exercise their contractual bumping rights and can remain employed by the State." At the show cause hearing, plaintiff's attorney admitted that the affected employees had contractual "bumping rights" entitling them to transfer to other positions within the department. Indeed, even if economic damages could constitute the kind of irreparable harm necessary to warrant injunctive relief, plaintiff has not shown that its members will suffer economic damages as a result of the closing of the warehouse because they can transfer to new jobs. Consequently, plaintiff has alleged even less harm to its members than that found to be insufficient in *Davies*. Therefore, we hold that the trial court did not

abuse its discretion in concluding that plaintiff failed to establish that its members would suffer irreparable harm in the absence of an injunction.

Because plaintiff's failure to demonstrate irreparable harm to its members provides grounds for affirming the trial court's decision, we need not address plaintiff's claim that the trial court abused its discretion when it found that plaintiff was not likely to prevail on the merits. In addition, the stay imposed by this Court on February 3, 1997 is immediately dissolved.

Affirmed.

/s/ Maura D. Corrigan
/s/ Jane E. Markey
/s/ Stephen J. Markman