

STATE OF MICHIGAN
COURT OF APPEALS

PONTIAC FIREFIGHTERS UNION LOCAL 376,

Plaintiff-Appellee,

v

CITY OF PONTIAC,

Defendant-Appellant.

UNPUBLISHED

November 30, 2006

No. 271497

Oakland Circuit Court

LC No. 2006-075367-CL

Before: Cooper, P.J., and Hoekstra and Smolenski, JJ.

HOEKSTRA, J., (*dissenting*).

I respectfully dissent from the majority’s decision to affirm the trial court’s grant of a preliminary injunction. As recognized by the majority, “[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.” *Ante* at 2, quoting *Senior Accountants, Analysts, & Appraiser’s Ass’n v Detroit*, 218 Mich App 263, 269; 553 NW2d 679 (1996). Thus, it has long been held that a party seeking preliminary injunctive relief must show that it will suffer real and imminent irreparable harm if an injunction is not issued. *Michigan State Employees Ass’n v Dep’t of Mental Health*, 421 Mich 152, 157; 365 NW2d 93 (1984); see also MCR 3.310(A)(4). In my view, the record and applicable law do not support a finding that plaintiff has met its burden in this regard.

Although the decision to issue a preliminary injunction is left to the sound discretion of the trial court, the facts on which the court relies in exercising its discretion are reviewed for clear error. See *International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW v Michigan*, 231 Mich App 549, 551; 587 NW2d 821 (1998). An abuse of discretion may arise from the court’s misunderstanding of controlling legal principles. *East Lansing v Dep’t of State Police*, 269 Mich App 333, 335; 712 NW2d 519 (2005). A finding is clearly erroneous if “the reviewing court, on the whole record, is left with the definite and firm conviction that a mistake has been made” *Bynum v ESAB Group, Inc*, 467 Mich 280, 285; 651 NW2d 383 (2002).

Here, the trial court found that the requisite harm had been demonstrated because, without issuance of the requested injunction, a number of firefighters would lose “their jobs, salary, and benefits” in apparent violation of the parties’ collective bargaining agreement. The court further concluded that this reduction in workforce would result in “significant increased risk of harm to the remaining firefighters,” who would be forced to respond to fires over a larger

territory. 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. *Thermatool Corp v Borzym*, 227 Mich App 366, 377; 575 NW2d 334 (1998); see also *International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW, Local 6000 v Michigan*, 194 Mich App 489, 507-508; 491 NW2d 855 (1992) (“[e]conomic injuries are not irreparable because they can be remedied by damages at law”). 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. *Thermatool, supra*. For this reason, it is generally inappropriate that a preliminary injunction be issued to reinstate an employee or prevent his layoff. *International Union, supra* at 508; *Alliance for the Mentally Ill of Michigan v Dep’t of Community Health*, 231 Mich App 647, 664-665; 588 NW2d 133 (1998). The perceived loss of “jobs, salary, and benefits” relied upon by the trial court to support its conclusion that plaintiff’s members would be irreparably harmed is thus a legally insufficient basis to warrant preliminary injunctive relief. Furthermore, as recognized by the majority, the city offered evidence that the number of firefighters at a fire will not be impacted by the layoffs, as the fire department will continue to (1) utilize both an incident command system and the “two in two out” rule, and (2) assign a safety officer to each fire. The record does not, therefore, support the trial court’s conclusion that a reduction in force would result in increased risk to those firefighters who continued their employment with the city.

Consequently, because the record does not support the trial court’s finding that plaintiff will suffer irreparable harm, I would reverse the trial court’s grant of preliminary injunctive relief.

/s/ Joel P. Hoekstra