

STATE OF MICHIGAN  
COURT OF APPEALS

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AMERICAN FEDERATION OF STATE,  
COUNTY AND MUNICIPAL EMPLOYEES  
COUNCIL 25 and AMERICAN FEDERATION  
OF STATE, COUNTY AND MUNICIPAL  
EMPLOYEES COUNCIL LOCAL 542,

UNPUBLISHED  
May 8, 2007

Plaintiffs-Appellants,

v

CITY OF DETROIT,

No. 268274  
Wayne Circuit Court  
LC No. 06-603081-CL

Defendant-Appellee.

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Before: Talbot, P.J., and Donofrio and Servitto, JJ.

PER CURIAM.

Plaintiffs, American Federation of State, County and Municipal Employees Council 25 (“AFSCME Council 25”), and its affiliated American Federation of State, County and Municipal Employees, Local 542 (“Local 542”), appeal as of right from an order denying their motion for injunctive relief and dismissing the case against defendant, city of Detroit (“Detroit”). Because plaintiffs did not file a timely demand for arbitration and would otherwise not have been entitled to initiate arbitration proceedings at the time they sought injunctive relief, the trial court did not err when it denied plaintiffs’ request for a preliminary injunction, and we affirm.

Plaintiffs argue that the circuit court erred by denying their motion for a preliminary injunction. This Court reviews a trial court’s decision to grant or deny a preliminary injunction for an abuse of discretion. *Michigan Coalition of State Employee Unions v Civil Service Comm*, 465 Mich 212, 217; 634 NW2d 692 (2001). An abuse of discretion occurs only when the trial court’s decision is outside the range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006). Further, we will not reverse the court’s underlying findings of fact unless they are clearly erroneous. *International Union, UAW v State*, 231 Mich App 549, 551; 587 NW2d 821 (1998).

A court should consider the following four factors when determining whether to issue a preliminary injunction: “(1) harm to the public interest if the injunction issues; (2) whether harm to the applicant in the absence of temporary relief outweighs the harm to the opposing party if relief is granted; (3) the likelihood that the applicant will prevail on the merits; and (4) a

demonstration that the applicant will suffer irreparable injury if the relief is not granted.” *Thermatool Corp v Borzym*, 227 Mich App 366, 376; 575 NW2d 334 (1998).

Plaintiffs argue that they will suffer irreparable injury because the power of the arbitrator to fashion a remedy in the event the grievances are upheld might be frustrated. The arbitrator will have full authority to rule on the issues raised by plaintiffs. Here, the arbitration provision contained in the parties’ collective bargaining agreement (“CBA”) provides that arbitration shall be step five in the grievance process and provides that “any unresolved grievances which related to the interpretation, application or enforcement of any specific article or section of this Agreement . . . may be submitted to arbitration.”

This Court has upheld a circuit court’s decision to grant an injunction in aid of compulsory arbitration “where the power of an arbitrator to fashion a remedy in the event the grievances are upheld might be frustrated in the absence of a preliminary injunction, and where plaintiffs . . . have demonstrated irreparable harm in the absence of an injunction.” *UAW Local 6000 v Michigan*, 194 Mich App 489, 508-509; 491 NW2d 855 (1992). In *UAW Local 6000*, a union challenged proposed layoffs and the transfer of research activities in violation of the parties’ collective bargaining agreement. *Id.* at 507. The Court noted that it has long held that “a preliminary injunction may be appropriate in aid of the jurisdiction of the Michigan Employment Relations Commission when a party to a collective bargaining agreement files unfair-labor-practice charges regarding, for example, alleged improper subcontracting that would become irrevocable and beyond the power of MERC to remedy in the absence of an injunction.” *Id.* at 508.

Similarly, in *Performance Unlimited v Questar Publishers, Inc*, 52 F3d 1373, 1380 (CA 6, 1995), the Sixth Circuit<sup>1</sup> held that the district court erred as a matter of law when it found that it could not enter preliminary injunctive relief because the dispute between the parties was the subject of mandatory arbitration. In *Performance Unlimited*, the parties agreed that arbitration “shall be the sole and exclusive remedy for resolving any disputes between the parties arising out of or involving (the) Agreement” sued upon. *Id.* at 1375. The trial court denied the plaintiff’s motion for a preliminary injunction which would have required the defendant to pay royalties to the plaintiff while their contract dispute was resolved in arbitration. *Id.* The issue was one of first impression in the Sixth Circuit. The Court followed the reasoning of the First, Second, Third, Fourth, Seventh, and arguably the Ninth Circuits when it held that:

[I]n a dispute subject to mandatory arbitration under the Federal Arbitration Act, a district court has subject matter jurisdiction under § 3 of the Act to grant preliminary injunctive relief provided that the party seeking the relief satisfies the four criteria which are prerequisites to the grant of such relief. We further conclude that a grant of preliminary injunctive relief pending arbitration is particularly appropriate and furthers the Congressional purpose behind the

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<sup>1</sup> This Court is not bound by the decisions of the Sixth Circuit and other federal lower courts on this legal issue, although they may be persuasive authority. *Abela v GMC*, 469 Mich 603, 606-607; 677 NW2d 325 (2004).

Federal Arbitration Act, where the withholding of injunctive relief would render the process of arbitration meaningless or a hollow formality because an arbitral award, at the time it was rendered, could not return the parties substantially to the status quo ante. [*Id.* at 1380 (quotations and citations omitted).]

Although *UAW Local 6000* and *Performance Unlimited* dealt with arbitration provisions not identical to the instant case, the reasoning is persuasive and applicable to the case at bar. The circuit court here denied plaintiff's motions for injunctive relief and granted summary disposition in favor of Detroit because it found that plaintiffs' claim fell within the parameters of the agreement to arbitrate. Based on the reasoning and holdings in *UAW Local 6000, supra* at 508-509, and *Performance Unlimited, supra* at 1380, the circuit court was empowered to render injunctive relief if it would aid arbitration, where "the power of an arbitrator to fashion a remedy in the event the grievances are upheld might be frustrated in the absence of a preliminary injunction," and where plaintiffs "have demonstrated irreparable harm in the absence of an injunction." *UAW Local 6000, supra* at 508-509. Affording such a remedy to a party to an arbitration agreement encourages arbitration of disputes where withholding injunctive relief would render the arbitration process meaningless because it could not substantially return the parties to the status quo. See *Performance Unlimited, supra* at 1380. Thus, plaintiffs are correct in arguing that injunctive relief may be appropriate in circumstances that would aid the arbitration process.

The trial court's decision, however, was not erroneous because the record indicates that plaintiffs had not filed a timely demand for arbitration and would otherwise not have been entitled to initiate arbitration proceedings at the time they sought injunctive relief. Thus, plaintiffs failed to show that the arbitrator's power to effectively arbitrate the issues was in jeopardy thus justifying injunctive relief. The CBA provided that plaintiffs are permitted to file an arbitration claim as step five of the grievance procedure if steps one through four failed to resolve the dispute. Plaintiffs apparently completed step one of the grievance procedure by filing a grievance, but there is no evidence that step five was a viable option for plaintiffs at the time they moved for an injunction. According to the language of the agreement, even if the circuit court had considered plaintiffs' request for injunctive relief and found such relief appropriate, Detroit would only have been temporarily estopped from transferring the property pending an arbitrator's determination of the issue. Plaintiffs, therefore, must first retain the ability to arbitrate in order to warrant the circuit court's examination of its entitlement to injunctive relief.

In any event, even if plaintiffs had filed a demand for arbitration, the issue of injunctive relief would not be ripe. At the time plaintiffs moved for an injunction, Detroit's proposed transfer was merely in the planning stages. There was no agreement to transfer the recreation center, but only preliminary negotiations. "[I]t is well settled that an injunction will not lie upon the mere apprehension of future injury or where the threatened injury is speculative or conjectural." *Dunlap v City of Southfield*, 54 Mich App 398, 403; 221 NW2d 237 (1974). Plaintiffs failed to articulate any irreparable harm other than the mere possibility that the arbitrator could not fashion an enforceable remedy in an arbitration that plaintiffs have not yet commenced. Further, there was no showing that the CBA protections would not be incorporated in any transfer agreement because of the preliminary nature of the negotiation. Utilization of steps two, three, or four of the grievance procedure may very well have preserved plaintiffs'

rights. Based on this record, the circuit court did not abuse its discretion by denying plaintiffs' request for a preliminary injunction.

Affirmed.

/s/ Michael J. Talbot  
/s/ Pat M. Donofrio  
/s/ Deborah A. Servitto