

**STATE OF MICHIGAN  
IN THE SUPREME COURT**

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**[IAFF] LOCAL 376, PONTIAC  
FIRE FIGHTERS UNION,**

Plaintiff-Appellee,

v.

**CITY OF PONTIAC,**

Defendant-Appellant.

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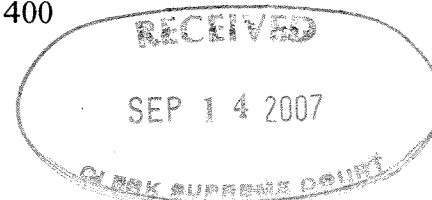
Supreme Court No. 132916

Court of Appeals No. 271497

Circuit Court No. 07-075367-CL  
Hon. John McDonald

**BRIEF OF AMICUS CURIAE  
INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS  
AND THE MICHIGAN PROFESSIONAL FIRE FIGHTERS UNION  
IN SUPPORT OF THE  
PONTIAC FIRE FIGHTERS UNION, IAFF LOCAL 376**

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**THE INTEREST AND POSITION OF *AMICI CURIAE* THE INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS AND MICHIGAN PROFESSIONAL FIRE FIGHTERS UNION**

The International Association of Fire Fighters, AFL-CIO, CLC (hereafter “IAFF”) is an unincorporated association comprised of municipal, state, federal, and private sector fire fighters throughout the United States and Canada. The IAFF’s mission includes protecting the safety and improving the working conditions of fire fighters and emergency medical services employees, as well as advancing the general health and welfare of those personnel through collective bargaining, court action, grass roots lobbying, and other appropriate means. As the leading advocate for the rights of over 281,000 fire fighters throughout the United States and Canada, who in turn protect 85% of those nations’ populations, the IAFF seeks to promote the general health of fire fighters who, in the course of serving the public, are directly exposed to life-threatening physical, thermal, and chemical occupational hazards each time they respond to a fire or other emergency.

The Michigan Professional Fire Fighters Union (hereafter “MPFFU”) is Michigan’s largest professional career fire fighters organization, representing the interests of over 5,000 fire fighters and 126 local unions throughout Michigan. The MPFFU is affiliated with the IAFF and works in conjunction with the IAFF in providing representation to fire fighters in Michigan with respect to collective bargaining, health and safety, training, and various other issues.

This brief *amici curiae* will demonstrate that the Circuit Court properly granted IAFF Local 376’s request for a preliminary injunction to prevent the City of Pontiac (hereafter “City”) from unilaterally laying off 28 fire fighters and/or paramedics in

violation of the collective bargaining agreement between the parties, in part because such layoffs would result in irreparable injury to IAFF Local 376 and its members. In the absence of the right to strike by fire fighters, public employers must be required to abide by the terms of collective bargaining agreements they negotiate. This is especially true with respect to contract provisions that prevent the unilateral layoff of fire fighters during the term of the contract – provisions for which fire fighters are required to make significant bargaining concessions.

As will be explained in greater detail below, the City's layoffs, if implemented, will result in increased health and safety risks to the remaining fire fighters, and thus, to the citizens they serve. Specifically, these layoffs will increase the time it takes the remaining fire fighters to respond to the scene of fires, thereby allowing the fires to become more intense and dangerous. Additionally, the layoffs will result in an increased workload for the remaining fire fighters, which will result in greater fatigue and risk of injury or mistake. Serious physical injury and death have no adequate remedy at law, i.e., monetary damages. Accordingly, because the layoff of 28 fire fighters by the City will result in irreparable injury to IAFF Local 376 and its members, the Circuit Court properly issued a preliminary injunction requiring the City to abide by the terms of the collective bargaining agreement and prohibiting it from laying off City fire fighters.

## **STATEMENT OF FACTS AND PROCEDURAL HISTORY**

In addition to the facts set forth below, the IAFF and the MPFFU hereby adopt, and incorporate herein, the facts of this case described in the brief submitted by Plaintiff-Appellee IAFF Local 376.

### **The Occupational Hazards of Fire Fighting**

The profession of fire fighting is, and always has been, a hazardous occupation. The tragic events of September 11, 2001, and the aftermath of Hurricane Katrina, however, have redefined the profession of fire fighting, which has become more hazardous than ever. Fire fighters play an essential role in efforts to detect, prevent, and respond to terrorist attacks, and to respond to natural disasters, hazardous materials emergencies, and other mass causality incidents. As the first to arrive on the scene of a fire or other emergency, fire fighters must be prepared to protect life and property at great risk to themselves. Moreover, because fire fighters are generally the first responders to the scene of an emergency, it is crucial that they respond as quickly as possible before a fire or other emergency situation is permitted to gain in intensity and size.

#### **1. Physical Hazards of Fire Fighting**

It is unquestionable that fire fighters face the risk of death or serious injury every time they respond to an alarm and/or provide emergency assistance to citizens<sup>1</sup>. When

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<sup>1</sup> According to the most recent available data, in the year 2000, 20.3% of fire fighters suffered work-related injuries as opposed to only 6.1% of the private sector. See *IAFF 2000 Death and Injury Survey*, online at [www.iaff.org/hs/PDF/2000%20D&I.pdf](http://www.iaff.org/hs/PDF/2000%20D&I.pdf). Every year, the IAFF publishes an annual Death and Injury Survey. During the most recent 10 year period (1991-2000), the survey has found that professional fire fighters experienced 342 line of duty deaths, 502 occupational diseases deaths, 343,861 injuries and 6,632 forced retirements due to occupationally induced diseases or injuries. See *IAFF Death and Injury Surveys, 1991-2000*. Fire fighter line of duty fatalities have ranked fire

fire fighters enter a burning structure, they are entering a setting that is without the regulatory controls and occupational safety and health standards that are found in other workplace settings. Accordingly, fire fighters are exposed to significant occupational hazards far beyond those experienced by other workers.

Fire fighting also involves strenuous physical activity, and there are numerous physical hazards associated with fire fighting that can lead to serious physical injury or death. For instance, in responding to structure fires, fire fighters face many risks, including the collapse of walls, ceilings and floors at a moment's notice. Under such circumstances, they may become trapped or even rendered unconscious, thereby increasing their risk of suffering significant burns, heart attacks, or death. Tragically, this was precisely what happened on June 18, 2007 in Charleston, South Carolina, when nine fire fighters were killed while fighting a fire inside of a burning furniture warehouse after the roof of the structure collapsed on them. Notably, prior to the collapse of the warehouse roof, the responding fire fighters were able to rescue two employees from inside of the burning structure. The tragic events of June 18, 2007 caused the largest single-day loss of fire fighters since the collapse of the World Trade Center on September 11, 2001.

## **2. Thermal and Chemical Hazards of Fire Fighting**

Fire fighters also encounter thermal and chemical hazards upon arriving at the scene of a fire. Fire fighters can experience heat stress from hot air, radiant heat, contact with hot surfaces, or from "endogenous heat," which is produced by the body during exercise, but which cannot be cooled or reduced during a fire due to the surrounding

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fighting among other publicized hazardous occupations in the private sector, such as mining and construction. *Id.*

elements. It is common for heat stress to be compounded during fire fighting as a result of the insulating properties of the protective clothing, which results in additional heat production within the body. Such heat production may result in local injury in the form of burns or generalized heat stress, with the additional risks of dehydration, heat stroke and cardiovascular collapse. Again, the longer it takes for fire fighters to arrive at the scene of a fire, the more severe these thermal hazards become. An uncontrolled fire is capable of doubling in size every 3 minutes, and structure fire temperatures can exceed 1500 degrees Fahrenheit.

Additionally, when a fire fighter enters a burning structure, he has little idea of the materials and/or chemicals he is being exposed to, or of the potentially hazardous effects of such exposure. Unlike most workers, fire fighters do not have the luxury of surveying their workplace before entering. As a result, fire fighters often perform work in toxic atmospheres without adequate knowledge of the precise chemical hazards that are present. Fire fighters are routinely exposed to complex and dynamic mixtures of chemical substances that are contained in fire smoke, textiles and furniture materials, and a wide variety of building debris. It is not at all unusual for fire fighters to encounter, among other substances, benzene, asbestos, polycyclic aromatic hydrocarbons, and formaldehyde during the course of fighting a fire. The longer a fire is permitted to rage on, the more serious the exposure to these toxic elements can become.

### **3. Fire Fighting Injuries Deaths and Diseases**

The significant physical, thermal, and chemical hazards encountered by fire fighters have resulted in a considerable number of work-related injuries or deaths. Of the injuries reported, approximately 65% occur while at the scene of an emergency. See

*IAFF 2000 Death and Injury Survey, supra.* Sprains and strains are the leading cause of line of duty injuries, followed by lacerations and contusions, burns, inhalations of hazardous materials, and eye injuries. *Id.*

Occupational hazards also contribute to a significant number of fire fighter line of duty deaths. For instance, in the year 2000, 34 fire fighters were killed in the line of duty. *Id.* The leading causes of deaths include heart attacks and burns after a fire fighter becomes trapped inside of a fire. *Id.* Deaths have also occurred as a result of vehicle and apparatus accidents and falls from burning structures. *Id.*

Moreover, occupational related diseases are becoming more common among fire fighters. The most common forms of occupational diseases are heart disease, lung disease and cancer. *Id.* Additionally, fire fighters are often afflicted with hearing loss, mental stress, and various communicable diseases, such as tuberculosis exposures, Hepatitis C exposures, and HIV/AIDS exposures. *Id.*

For the reasons stated above, it is critical to both fire fighters and the public they serve that fire stations be adequately staffed with experienced and properly trained fire fighters. It is also critical that fire fighters respond to the scene of a fire as quickly as possible, so as to reduce to the fullest extent possible the physical, thermal and chemical hazards that increase each and every moment that a fire is not extinguished.

## ARGUMENT

### A. STANDARD OF REVIEW

This Court reviews a trial court's grant of injunctive relief for an abuse of discretion. See, e.g., *Holly Twp v Dep't of Natural Resources*, 440 Mich. 891, 487 N.W.2d 753 (1992) (explaining that "granting of injunctive relief is within the sound discretion of the trial court, although the decision must not be arbitrary and must be based on the facts of the particular case").

### B. THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION IN GRANTING IAFF LOCAL 376'S REQUEST FOR A PRELIMINARY INJUNCTION

The Circuit Court did not abuse its discretion when it granted IAFF Local 376's request for a preliminary injunction, in part, because allowing the City to evade its obligations under the collective bargaining agreement it maintains with IAFF Local 376 and lay off 28 fire fighters would result in significant irreparable injury to IAFF Local 376.<sup>2</sup> Specifically, the Circuit Court held that IAFF Local 376 would be irreparably harmed since

[a] reduction in the workforce and the closing of several City fire stations would result in a significant increased risk of harm for the remaining fire fighters. *Fewer firefighters would be available to respond to fires and the closing of stations caused by the lay off would result in the firefighters having to cover a larger territory. The remaining firefighters would thus not be able to respond as quickly as they used to which means that they would be faced with fires that have increased in intensity or size and as a result are more dangerous.* (emphasis added).

For reasons explained more fully below, this Court should affirm the Circuit Court's granting of IAFF Local 376's request for a preliminary injunction and require the

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<sup>2</sup> Article V, Section 5 of the collective bargaining agreement between IAFF Local 376 and the City provides: "During the duration of this Agreement, there will be no layoff of bargaining unit personnel . . ."

City to abide by the terms of the collective bargaining agreement it maintains with IAFF Local 376.

**1. Preliminary Injunctions in Michigan**

In Michigan, the generally accepted analysis used in preliminary injunction cases employs four factors:

harm to the public interest if an injunction issues, whether the harm to the applicant in the absence of a stay outweighs the harm to the opposing party if a stay is granted; the strength of the applicant's demonstration that the applicant is likely to prevail on the merits; and demonstration that the applicant will suffer irreparable injury if a preliminary injunction is not granted.

*Michigan State Employees Ass'n v Dep't of Mental Health*, 421 Mich. 152; 365 N.W.2d 93 (1984). This Court has recognized that a preliminary injunction may be appropriately entered if it is demonstrated that "the applicant will suffer irreparable injury" absent the preliminary injunction (and the other appropriate prerequisites to the grant of a preliminary injunction are met). *Michigan Coalition of State Employee Unions v. Michigan Civil Service Commission*, 465 Mich. 212, 224 (2001) (citing *Michigan State Employees Ass'n*, 421 Mich 152 (1984)). Moreover, there is no requirement that the irreparable injury in question must have already occurred for injunctive relief to be proper. *Id.* Thus, as is the case here, where irreparable injury will occur if a certain action is taken in the future, a preliminary injunction is entirely appropriate.

In the present matter, it is undeniable that IAFF Local 376 and its members will suffer irreparable injury if the City is permitted to evade its obligations under the collective bargaining agreement and lay off fire fighters and/or paramedics. Specifically, IAFF Local 376 members will face significant and increased health and safety risks when

responding to the scene of a fire or other emergency as a result of any layoff of fire fighting personnel. Additionally, IAFF Local 376 members will be forced to accept a greater workload as a result of the layoffs, resulting in a higher level of fire fighter fatigue and increasing the risk of injury or death.

As an initial matter, any argument by the City that a preliminary injunction is an inappropriate remedy in the present matter because IAFF Local 376 members may be entitled to a back pay award or other monetary damages after the City lays off fire fighters in violation of the collective bargaining agreement must fail. Such an award would be entirely inadequate to prevent a member of Local 376 from being injured or killed in the line of duty due to understaffing of the fire department. Moreover, back pay is not even an adequate remedy with respect to those fire fighters who would have been laid off had the injunction not been issued. As Justice Marshall noted in his dissent in *Sampson v. Murray*, 415 U.S. 61, 101-02 (1974):

The availability of a back pay award several years after the dismissal is scant justice for a Government employee who may have long since been evicted from his home and found himself forced to resort to public assistance in order to support his family . . . Whether common or not, such consequences amount to irreparable injury which a court of equity has power to prevent.

Michigan courts have cited Justice Marshall's dissent with approval. See *Michigan Council 25 AFSCME v. Wayne County*, 236 Mich. App. 21 (1984). Thus, the mere fact that IAFF Local 376 may be entitled to some form of monetary award or back pay does not prevent it from receiving the proper injunctive relief.

**2. If Implemented, the City's Layoffs Will Result in Significant Irreparable Injury to IAFF Local 376**

The City is attempting to lay off 28 of the 112 fire fighters it currently employs to protect its citizens. Thus, if the City is permitted to conduct its layoffs, fire fighting personnel in the City will be reduced by 25%. Additionally, the City's layoffs would also decrease the number of fire companies and EMS vehicles within the City that will be available to respond to fires and other emergencies. As a result, the remaining fire companies would be forced to cover a greater geographic area and be required to travel further distances when responding to fires. It is during these precious extra minutes that a controllable fire can increase in intensity and size and transform into a fire that poses grave risks of serious bodily injury or death to the responding fire fighters.

During the extra time that it will take the remaining fire fighters to travel to respond to a fire, a number of events can transpire that can jeopardize a fire fighter's safety. For instance, a structure's walls, ceilings and floors can burn to the point where they can collapse at a moment's notice. This is made all the more dangerous by the fact there are often no visible signs that a collapse is forthcoming. Fire fighters who are trapped by structural collapses experience significant trauma – including physical impairments, severe burns, shock, heart attack and heat stress – and often incur serious permanent injuries or even death as a result of such incidents.

Increased travel and response times also subject fire fighters to greater risk of exposure to toxic agents at the emergency scene, since the longer a fire is permitted to continue, the more likely it is that a fire fighter will encounter some form of exposure to complex chemical substances. It is axiomatic that the more intense a fire becomes, the more intense and dense the smoke associated with that fire will be. Within this smoke,

many different types of toxic substances can be found, depending on what type of debris is burning. These substances can include, but are not limited to benzene, asbestos, polycyclic aromatic hydrocarbons, and formaldehyde. Again, the quicker that fire fighters are able to respond to a fire, the lower the risk of exposure to these toxic chemicals.

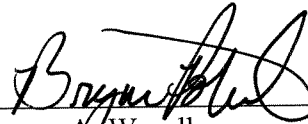
Finally, a 25% reduction in the City's fire fighting force will necessarily result in an increased workload for the remaining fire fighters, both at the station and potentially at the scene of a fire or emergency. This increased workload will directly increase the fatigue level of the remaining fire fighters, which will adversely affect their ability to fight fires. For instance, when fire fighters respond to a fire, they must wear fire retardant equipment weighing approximately 75 pounds. Thus, any additional fatigue will affect their physical ability to properly extinguish fires while under such physical stress. This is significant because approximately 65% of all reported fire fighter injuries occur while actually fighting a fire or responding to an emergency. See *IAFF 2000 Death and Injury Survey*. These injuries are vast in scope and can include any of the following: sprains and strains, lacerations, contusions, burns, inhalations of hazardous materials, and eye injuries. *Id.* Thus, any increase in the workload of fire fighters can have detrimental affects on the health and safety of fire fighters while fighting fires.

**CONCLUSION**

The IAFF and the MPFFU, in support of IAFF Local 376, respectfully request that this Court affirm the decision of the Circuit Court and the Court of Appeals upholding a preliminary injunction that will prevent the City from laying off 28 fire fighters in violation of Article V, Section 5 of the collective bargaining agreement.

Respectfully Submitted,

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