

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF ST. LOUIS

SIXTH JUDICIAL DISTRICT

Paula Savela,

Plaintiff,

vs.

City of Duluth,

Defendant.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
ORDER AND MEMORANDUM**

File No. 69DU-CV-08-1793

The above entitled matter came before the Honorable Kenneth A. Sandvik, Judge of District Court, on December 18, 2009 at the St. Louis County Courthouse, Duluth, Minnesota for the purpose of a hearing on Plaintiff's Motion for Temporary Injunction and Restraining Order Pending Appeal. Paula Savela, the Class Representative, and members of the Class appeared through counsel, Don L. Bye and Shelly M. Marquardt of Duluth, Minnesota. The City of Duluth was represented by attorney John M. LeFevre, Jr. of Minneapolis, Minnesota. Duluth Mayor Don Ness and Gunnar Johnson, the Duluth City Attorney, were also present on behalf of the City of Duluth.

The Court, having taken this matter under advisement, makes the following:

FINDINGS OF FACT:

For purposes of this Order, the Court finds the following facts to be true:

1. Three (3) individual Plaintiffs commenced this action in April of 2008, alleging that the City of Duluth had breached contractual obligations that were set forth in the Collective Bargaining Agreements (hereinafter "CBAs") between the City and the collective bargaining units.

2. On May 12, 2009, this Court approved and signed, pursuant to the parties' stipulation, an Order for Class Certification and Amended Scheduling Order.
3. The Class Definition is "all Duluth retirees who are former bargaining unit members and who retired from January 1, 1983 through December 31, 2006, and their spouses/dependents who are presently entitled to the retiree health care benefits, under the collective bargaining agreements ("CBAs") for the following bargaining units: Local 101 International Association of Fire Fighters; Duluth Police Union, Local 807; Confidential Employees; City of Duluth Supervisory Association; and Local 66 of A.F.S.C.M.E., Council 5 (formerly Council 96) for Basic Unit Employees." The Class members about 1,300 persons.
4. The Class satisfied the prerequisites of Minn.R.Civ.P. 23.01 and was certified under Minn.R.Civ.P. 23.02(a)(1) and (a)(2).
5. On or about May 26, 2009, Plaintiffs' Amended Complaint was filed with this Court.
6. In the Amended Complaint, the Class Representative and Class members (hereinafter "Plaintiffs") alleged that they had been damaged or were threatened with damage as a result of the City's breach of its contractual obligations.
7. Plaintiffs sought damages arising from and proximately caused by the City's alleged breach of its contractual obligations.
8. Plaintiffs also sought declaratory and injunctive relief.
9. The controversy between the parties concerned the meaning of the CBA language ("to the same extent as active employees") on the following issue:

As a matter of contract, are the Class members' (Plaintiffs') health benefits fixed and governed by the plan in place on the date of their retirement or may the City of Duluth modify the benefits whenever and however benefits for current employees are modified?

10. The CBAs all contain the following language with respect to retired employees' hospital-medical insurance coverage:

Any employee who retires from employment with the City...shall receive hospital-medical insurance coverage to the same extent as active employees, subject to the following conditions and exceptions...

11. Plaintiffs claimed that their health benefits, their share of the costs thereof including co-pays and deductibles, were fixed and governed by the plan in place on the date of their retirement.

12. Plaintiffs claimed the City promised it would continue to provide insurance benefits the same as those in effect at the time of the employees' retirement for the retired employee and the retiree's spouse and dependents. The benefits were to be for the lifetime of the retiree, or the lifetime of the retiree's spouse and dependents, whichever was latest.

13. Plaintiffs sought enforcement of these alleged promises.

14. The City of Duluth claimed that Plaintiffs' health benefits could be modified to the same extent that benefits for current employees are modified.

15. The City sought a determination that it may modify the retirees' benefits, including the costs therefore and the co-pays and deductibles, whenever and however benefits for active employees are modified.

16. The City did not dispute that it is obligated to provide health benefits to Plaintiffs.

17. The City did not dispute that it agreed to pay health-care premiums for Plaintiffs, subject to conditions in the CBAs.

18. On May 26, 2009, the City of Duluth filed a Notice of Motion and Motion for Summary Judgment and a Memorandum in Support of City's Motion for Summary Judgment.

19. On July 10, 2009, Plaintiffs filed a Notice of Motion and Answer and Counter Motion for Summary Judgment, a Memorandum in Support of Summary Judgment and Affidavits.
20. A hearing on the cross motions for summary judgment was held on August 7, 2009.
21. On October 13, 2009, this Court issued Findings of Fact, Conclusions of Law, Order and Memorandum.
22. This Court found that the CBAs are not ambiguous and the contract language shall be given its plain and ordinary meaning.
23. This Court found that Plaintiffs' health benefits are not fixed and governed by the plan in place on the dates of their retirements and the CBAs, in effect on the retirement dates, do not prohibit the City from changing or modifying the health insurance plan provided to the Plaintiffs.
24. The Court Order provided that the CBAs require the City of Duluth to provide the same coverage to retirees that it provides to active employees.
25. Plaintiffs' Motion for Summary Judgment and Request for Declaratory Relief was denied.
26. The City's Motion for Summary Judgment and Request for Declaratory Relief was granted and the Court ordered that the City may modify the Plaintiffs' benefits whenever and however benefits for active employees are modified.
27. On October 27, 2009, an Order for Entry of Judgment was issued. The Order dissolved the temporary restraining order and injunction that had been granted during the pendency of the action.
28. On November 20, 2009, this Court received a copy of a certificate of filing by mail of Plaintiff's Notice of Appeal.

29. On December 2, 2009, this Court received a Notice of Case Filing from the Minnesota Court of Appeals. Case number A09-2093 was assigned.
30. On December 3, 2009, the City of Duluth sent a letter to retiree health plan members, which explained the Retiree Medical Plan Conversion that would become effective on January 1, 2010. Counsel for Plaintiffs received a copy of the letter the same day it was sent out to retiree health plan members.
31. On December 7, 2009, Plaintiffs' Notice of Motion and Motion for Temporary Injunction and Restraining Order Pending Appeal was filed.
32. Plaintiffs seek a temporary restraining order and preliminary injunction prohibiting the City of Duluth from changing the Plaintiffs' health insurance benefits under the CBAs which were in effect at the time of their respective retirement dates during the pendency of the appeal.
33. Plaintiffs allege that without the assistance of this Court and if the City of Duluth is allowed to proceed with the Retiree Medical Plan Conversion, the Plaintiff and Class Members will suffer immediate, irreparable and substantial harm and injury.
34. Plaintiffs claim that they are not in a financial position to post any additional bond or deposit for an injunction pending completion of the appeal as they have already paid the \$500 appellate filing fee and the \$500 deposit in lieu of the bond required for initiating the appeal.
35. The City of Duluth filed a Response to Plaintiffs' Motion for a Temporary Injunction Pending Appeal and argued that Plaintiffs will not suffer any immediate and irreparable harm as the Class claims. The City claims that if the retirees are transferred to the current

active-employee health plan many benefits will increase, some costs will go down and some costs for some Class members may increase.

36. The City of Duluth also claims that the City and the public face substantial harm and high costs if an injunction is issued precluding the change in the health care plans.
37. In its argument to the Court, the City alleges its interests will be significantly jeopardized in the amount of more than \$1.2 million, if the injunction is issued.
38. The City requests that the Court deny Plaintiffs' motion or require a bond in the amount of \$1 million in order to adequately protect the City's and the public's interest.
39. A hearing on Plaintiffs' motion was held at the St. Louis County Courthouse on December 18, 2009.

CONCLUSIONS OF LAW:

1. Plaintiffs are not entitled to an injunction pending appeal under Minn. R. Civ. P. 62.02 but are entitled to a stay of this Court's Order dated October 13, 2009, under the Rules of Civil Appellant Procedure, specifically Minn. R. Civ. App. P. 108.01, if Plaintiffs provide a supersedeas bond for the security of the rights of the Defendant.
2. The record has been generated and the City has prevailed. The City identifies significant costs that it will incur if not allowed to proceed with the Retiree Medical Plan Conversion on January 1, 2010. Those costs have not been contradicted by Plaintiffs.

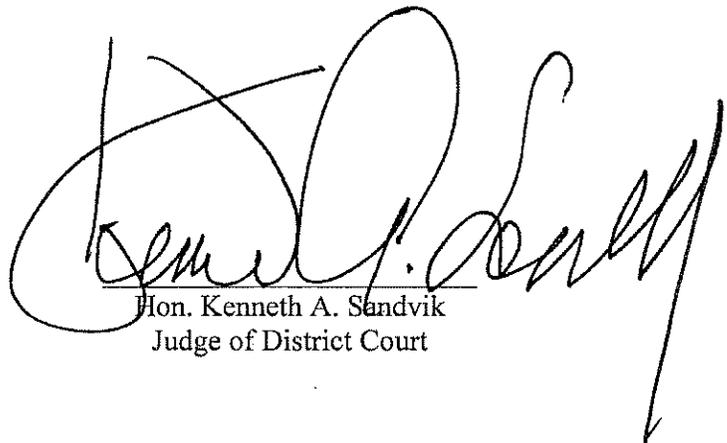
3. A supersedeas bond in the amount of \$750,000 is adequate to provide security to the City of Duluth.

ORDER:

1. Plaintiffs' Motion for an Injunction Pending Appeal under Minn. R. Civ. P. 62.02 is hereby DENIED.
2. Plaintiffs may obtain a stay of this Court's October 13th Order provided a supersedeas bond in the amount of \$750,000 is filed with the Court.
3. The attached memorandum is incorporated herein.

IT IS FURTHER ORDERED that copies of the Order and Memorandum should be directed by mail to counsel of record for the parties, as such are more fully identified in the files and records herein.

Dated this 22nd day of December, 2009.



Hon. Kenneth A. Sandvik
Judge of District Court

MEMORANDUM

Plaintiffs filed a Motion for a Temporary Restraining Order and Temporary Injunction

Pending an Appeal pursuant to Minn. R. Civ. P 62.02, which provides:

When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

For a temporary injunction to be granted, the party seeking the injunction must show that any possible legal remedy is inadequate and an injunction is necessary to prevent great and irreparable injury. *Cherne Indus., Inc. v. Grounds & Assoc., Inc.*, 278 N.W.2d 81, 92 (Minn.1979). The failure of a moving party to show irreparable harm is, by itself, a sufficient ground for denial of a motion for a temporary injunction. *Morse v. City of Waterville*, 458 N.W.2d 728, 729 (Minn.App.1990). Generally, to be considered irreparable, "[t]he injury must be of such a nature that money alone could not suffice." *Id* at 729-730. A party seeking an injunction must show that the particular relief requested will prevent the certain occurrence of an event that will cause significant injury, harm that cannot be redressed by a legal remedy. Problematical damages based on speculation cannot be used to establish irreparable harm as a basis for equitable relief. *City of Mounds View v. Metropolitan Airports Commission*, 590 N.W.2d 355 (Minn.App.1999).

This Court finds that Plaintiffs are not entitled to an injunction pending appeal under Minn. R. Civ. P. 62.02. The allegation that some members of the Class may incur increased costs is speculative and not supported by the evidence supplied. Whether or not the Defendant is in a stronger financial position than the Class as a whole does not eliminate the appropriateness of a security requirement. Indeed, Plaintiffs offer nothing to show the extent of the claimed

expenses the Class members may incur and a claim that the members cannot afford to pay whatever charge they face is not sufficient.

Under Minn. R. Civ. App. P. 108.01, an “appellant may obtain a stay by providing a supersedeas bond or other security in the amount and form which the trial court shall order and approve...” Plaintiffs contend that, pursuant to subdivision 7, their filing of a \$500 cost bond in this type of case is sufficient. This Court disagrees. The record has been generated and the City of Duluth prevailed. In response to Plaintiffs’ motion, the City has identified significant costs that it will incur if not allowed to proceed with the Retiree Medical Plan Conversion on January 1, 2010 and those costs have not been contradicted by Plaintiffs. Subdivision 8 of the Rule provides “the trial court may require the appellant to file a supersedeas bond if it determines that the provisions of Rule 108 do not provide adequate security to the respondent.” The cost bond under subdivision 7 does not provide adequate security to the City.

The Court finds that Plaintiffs are entitled to a stay of this Court’s October Order under the Rules of Civil Appellant Procedure, specifically Minn. R. Civ. App. P. 108.01, if Plaintiffs provide a supersedeas bond for the security of the rights of the City of Duluth in the amount of \$750,000.

12/22/2009

KAS/taw