

STATE OF MICHIGAN
COURT OF CLAIMS

UNIVERSITY OF MICHIGAN PROFESSIONAL
NURSING COUNCIL,

Plaintiff,

OPINION AND ORDER DENYING
MOTION FOR TEMPORARY
RESTRAINING ORDER

V

Case No. 21-000019-MZ

REGENTS OF THE UNIVERSITY OF
MICHIGAN,

Defendant,

Hon. Cynthia Diane Stephens

and

MICHIGAN NURSES ASSOCIATION,

Intervening Defendant.

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Pending before the Court is plaintiff's motion for temporary restraining order. A hearing was held on the motion on February 17, 2021. The motion is DENIED.

I. BACKGROUND

Plaintiff University of Michigan Professional Nurse Council (UMPNC) is a labor organization comprised of nursing personnel employed at the University of Michigan Hospitals. It is a domestic non-profit corporation that was organized in 2013. UMPNC was affiliated with intervening defendant Michigan Nurses Association (MNA), another Michigan non-profit corporation. The UMPNC has its own bylaws and its membership elects its own executive

committee and bargaining committee. UMPNC and MNA are parties to separate lawsuit which pends in the Washtenaw Circuit Court in which UMPNC alleges a breach of contract against the MNA. In that lawsuit MNA challenges, among other things, the right of plaintiff in this case to use the corporate name UMPNC. The current CBA with the University states that the CBA was entered into between “the Michigan Nurses Association and its University of Michigan Professional Nurse Council... .”

For reasons not pertinent to the instant matter, the UMPNC executive committee voted in favor of a resolution to “disaffiliate” from the MNA on or about December 25, 2020. The disaffiliation was to be effective “upon a majority vote of those UMPNC members eligible and voting in a secret ballot election that shall be conducted as soon as practicable.” The resolution further stated, “upon a majority vote of the UMPNC membership approving of the disaffiliation from the MNA . . . that UMPNC will be an unaffiliated union.” The executive committee sent notice to all of its members and scheduled a special meeting for January 2, 2021 to vote on the resolution. The UMPNC membership voted at three special meetings—split to accommodate members working on different shifts—on or about January 2, 2021. In total, 1,075 members voted in favor of disaffiliation, 488 members voted against, and 18 members abstained.

The University of Michigan declined to recognize the disaffiliation and stated that any dispute between the entities with respect to which entity was the certified bargaining representative was a matter for MERC to resolve. On or about January 11, 2021, the UMPNC filed a representative petition with MERC. MERC dismissed the petition because the UMPNC did not have signatures from over 30% of the bargaining unit. On or about January 22, 2021, the MNA placed the UMPNC into trusteeship and installed a new executive committee. MNA requested that the University cease any labor-relations interactions with plaintiff in this case.

Plaintiff in this case only requests injunctive relief. The issue of which entity is the collective bargaining agent for the nursing personnel at the University of Michigan Hospitals is pending before MERC. Plaintiff asks this Court to order the University to recognize its executive committee members and to not recognize the MNA-appointed executive committee as executive committee members of UMPNC while the MERC proceeding pends. Plaintiff argues that its members' right of free choice with respect to their bargaining representatives has been disregarded.

II. ANALYSIS

Plaintiff has argued and advanced this matter like a motion for preliminary injunction. Such a motion can only be granted if the movant demonstrates that the following factors support the issuance of relief:

(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. [*Taxpayers for Mich Const Gov't v State*, 330 Mich App 295, 304; 948 NW2d 91 (2019) (citation and quotation marks omitted).]

This state's jurisprudence recognizes that injunctive relief "is an extraordinary remedy that issues only when justice requires" *Janet Travis, Inc v Preka Holdings, LLC*, 306 Mich App 266, 274; 856 NW2d 206 (2014).

A. LIKELIHOOD OF SUCCESS ON THE MERITS

The central controversy between the parties to this case and the intervenor in this case is if and through what procedure the plaintiff has the right to disaffiliate from the MNA. MERC will resolve that issue . The request for relief here, an injunction in aide of the MERC proceeding requires this court to analyze the law surrounding that controversy to ascertain whether plaintiff

has a likelihood of success on the merits . Plaintiff has not made a showing that would support the issuance of the requested relief.

The parties to this case and the intervenor each have differing opinions regarding the procedural safe-guards that were allegedly followed for the disaffiliation vote. However, it is not the safeguards that are outcome-determinative of the request for injunctive relief. The lynchpin of plaintiff's argument is the assertion that the employees had the right to disaffiliate from MNA. The record does not support the assertion that the employees had the right to disaffiliate within the context of the CBA , however. To that end, while plaintiff has alleged that UMPNC has its own bylaws, they have not directed the Court's attention to a provision of those bylaws or the CBA that provides the authority for the disaffiliation vote. To the contrary MNA has presented its by-laws which appear to preclude disaffiliation within the context of this CBA. See *Mayo v Great Lakes Greyhound Lines*, 333 Mich 205, 213; 52 NW2d 665 (1952) (recognizing the role played by a union's bylaws in matters regarding representation of employees). See also 51 CJS Labor Relations § 184 (explaining that the right of a local union to withdraw or disaffiliate from its parent organization depends on the terms of the pertinent bylaws or contractual documents outlining the relationship between the organizations). Finally, plaintiffs have not presented any provision in the CBA that allowed disaffiliation.

The pertinent law governing the separation of these two labor organizations is the Public Employee Relations Act (PERA). See *Rockwell v Crestwood Sch Dist Bd of Ed*, 393 Mich 616, 629; 227 NW2d 736 (1975) (describing PERA as “the dominant law regulating public employee labor relations.”). Notably, the Court agrees with the intervenor that it is appropriate to look to MCL 423.212, which provides procedures for petitions concerning representation by public employees. Under MCL 423.212(a), public employees such as the members of the UMPNC can

file a petition with MERC regarding representation. The petition must allege “that 30% or more of the public employees within a unit claimed to be appropriate for such purpose wish to be represented for collective bargaining and that their public employer declines to recognize their representative as the representative” or that the “the individual or labor organization, which is certified or is being currently recognized by their public employer as the bargaining representative, is no longer a representative” MCL 423.212(a). The plaintiff seeks to substitute itself as an independent labor organization as the collective bargaining agent, eliminating the co-joined certification issued by MERC. There is no proof that the requirements of MCL 423.212(a) have been met. Plaintiff has not alleged that 30% or more of its employees have advocated for a change in the bargaining representative. Nor do the results of the vote taken in this case reach the 30% threshold, as only 1,075 out of nearly 6,300 members—approximately 17% of membership—voted in favor of the disaffiliation. Where plaintiff has fallen short of the target required by MCL 423.212(a), and where plaintiff has not provided any source of authority for its actions, plaintiff has not demonstrated a likelihood of success on the merits at this stage of the litigation.¹

B. IRREPARABLE HARM

While the failure to establish a substantial likelihood of success on the merits is fatal to the prayer for injunctive relief, this Court will nonetheless address the issue of irreparable harm. The Court is not persuaded by plaintiff’s claim of an immediate threat of irreparable harm. Plaintiff

¹ Given the lack of pertinent information about bylaws—in this case—and MERC certification—at least in the case cited—the Court finds that MERC opinion cited by plaintiff, *Wayne Co*, 1995 MERC Lab Op 239, is unavailing. Moreover, given that PERA applies to the public employees at issue here, the Court finds unconvincing arguments made regarding *Yates Indus Inc*, 264 NLRB 1237 (1982), which considered the federal National Labor Relations Act, 29 USC 151 *et seq*.

argues that absent injunctive relief, the members of the collective bargaining unit might be harmed because they lose the right of free choice and self-determination by not being represented by an entity of their choice.² Michigan courts have long required parties seeking such relief to support their claim with facts and argument commensurate with the “extraordinary nature” of the relief. *Pontiac Fire Fighters Union Local 376 v Pontiac*, 482 Mich 1, 8; 753 NW2d 595 (2008). The executive members clearly face return to other nursing duties and they will be deprived of the use of employer resources to further union goals. This harm is, of course, immediate. However, the aggrieved executive committee members can seek monetary compensation from the employer and other relief from MERC. There is a possibly-delayed, but adequate, remedy at law. Nowhere in the lengthy briefing did plaintiff include an affidavit averting harm signed by a represented employee who was not a UMPNC executive member. At oral argument plaintiff declaimed that aggrieved employees would not receive the benefit of experienced union official’s representation. However, as defendant noted, both the previously member-elected and the current MNA-appointed executive members are guided by the same CBA provisions, PERA statutes, and MERC rules. Should plaintiff prevail at MERC, any deprivation of the right of self-governance will be cured at law. The proponent of preliminary injunctive relief must demonstrate particularized harm, and “[t]he mere apprehension of future injury or damage cannot be the basis for injunctive relief.” *Id.* at 9. On the record before the Court, plaintiff cannot make this “indispensable” showing. The failure to make the required showing on this “indispensable” factor for establishing entitlement to

² While the briefing focused on three claims of irreparable harm—(1) the chilling effect on statutory rights; (2) the ability of former UMPNC members to present bargaining unit members; and (3) the harm to the image of the former UMPNC officers and UMPNC—the parties only argued the free choice matter at oral argument.

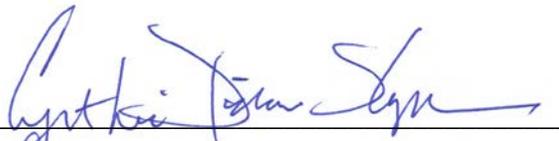
preliminary injunctive relief is enough to convince the Court to deny the motion. See *id.* The court declines to address the other factors for obtaining injunctive relief as a result.

III. CONCLUSION

IT IS HEREBY ORDERED that plaintiff's motion for temporary restraining order is DENIED.

This is not a final order and it does not resolve the last pending claim or close the case.

March 2, 2021


Cynthia Diane Stephens
Judge, Court of Claims