

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

CHUGACH CONSUMERS and RAY
KREIG,

Plaintiffs,

vs.

CHUGACH ELECTRIC ASSN., INC.,

Defendant.

Case No. 3:06-cv-0280 TMB

ORDER DENYING MOTION FOR
TEMPORARY RESTRAINING ORDER

Plaintiffs Chugach Consumers and Ray Kreig have asked this Court to issue a temporary restraining order preventing the Board of Directors of Defendant Chugach Electric Association (“Chugach Electric”) from ratifying an agreement between Chugach Electric and the International Brotherhood of Electrical Workers (“IBEW”) pending the outcome of a motion for remand currently before this court and an action currently underway before the Regulatory Commission of Alaska. Having reviewed the briefs of the parties and considered their oral arguments before this Court, the Court hereby DENIES Plaintiffs’ motion for a temporary restraining order. (Docket No. 4).

In order to obtain injunctive relief, “the movant must demonstrate either: (1) a combination of probable success on the merits and the possibility of irreparable harm, or (2) that serious questions are raised as to the merits and that the balance of hardships tips in its favor.”¹ “These two formulations represent two points on a sliding scale in which the required degree of irreparable harm increases as the probability of success decreases. Under any formulation of the test, plaintiff must demonstrate that there exists a significant threat of irreparable injury.”² The moving party has the burden of proof on each element of the test.³

Not only have Plaintiffs failed to demonstrate a probability of success on the merits of their claim or raise serious questions as to the merits, they have failed to articulate for the Court the exact nature of their claim. Plaintiffs are asking that this Court hold the signing of the labor contract in abeyance so that the RCA has an opportunity to conduct an investigation into the

¹ *Dep’t of Parks and Recreation for State of California v. Bazaar Del Mundo Inc.*, 448 F.3d 1118, 1123 (9th Cir. 2006).

² *Oakland Tribune, Inc. v. Chronicle Pub. Co., Inc.*, 762 F.2d 1374, 1376 (9th Cir. 1985)(citations omitted).

³ *Envtl. Council of Sacramento v. Slater*, 184 F. Supp. 2d 1016, 1027 (E.D. Cal. 2000).

propriety of the agreement. But a complaint, brought by Plaintiffs, is currently pending before the RCA, where the RCA is exercising its authority under Alaska statute⁴ to investigate Plaintiffs' claims. Plaintiffs have acknowledged at oral argument that the RCA, even if it were to find that Chugach Electric acted unreasonably in negotiating the labor agreement, could not prevent Chugach Electric from signing the contract. The relief Plaintiffs are seeking from this Court through this motion for a temporary restraining order is therefore relief to which they would not even be entitled if they were successful in prosecuting their complaint on the merits before the RCA. And the Plaintiffs have failed to identify for this Court any other basis in the law to establish an entitlement to the relief they seek. Having failed to identify a viable claim that would entitle them to the relief they are seeking, Plaintiffs have also failed to establish a probability of success or raise serious questions as to the merits of any such claim.

Plaintiffs have also failed to demonstrate the possibility of irreparable harm or that the balance of hardships tips in their favor. Under Alaska statute there is a mechanism in place for the RCA to consider whether management practices are unreasonable and to take corrective measures to ensure that any harm from unreasonable management practices is not passed on to the consumer. And "[w]here unreasonable practices are found to exist, the commission may, after providing reasonable notice and opportunity for hearing, take appropriate action to protect the public from the inefficient or unreasonable practices and may order the public utility to take the corrective action the commission may require to achieve effective development and regulation of public utility services."⁵ The corrective action the RCA is empowered to make extends to setting rates to customers. Under AS 42.05.431(a), "[w]hen the commission, after an investigation and hearing, finds that a rate demanded, observed, charged, or collected by a public utility for a service subject to the jurisdiction of the commission, or that a classification, rule, regulation, practice, or contract affecting the rate, is unjust, unreasonable, unduly discriminatory or preferential, the commission shall determine a just and reasonable rate, classification, rule, regulation, practice, or contract to be observed or allowed and shall establish it by order." The only harm that Plaintiffs allege would take the form of a possible rate increase to consumers. But if the RCA, after completing its investigation, deems the contract to be unreasonable, the RCA is authorized to prevent any inflated rates from being passed on to the consumer. Plaintiffs have therefore failed to make a showing that they would suffer any irreparable harm if the RCA were to make a determination about the reasonableness of the contract after it is signed.

Plaintiffs have also failed to show that the balance of hardships tips in their favor. While Plaintiffs have failed to identify for the Court precisely what irreparable harm they would suffer were this Court to decline to issue the TRO, Chugach Electric has provided evidence that further delay in ratifying and implementing work rule revisions of the contract would result in significant increased costs to Chugach Electric. Therefore, the balance of hardships tips in favor

⁴ Under AS 42.05.511(a), "[t]he commission may investigate the management of a public utility, including but not limited to staffing patterns, wage and salary scales and agreements, investment policies and practices, purchasing and payment arrangements with affiliated interests, for the purpose of determining inefficient or unreasonable practices that adversely affect the cost or quality of service of the public utility."

⁵ AS 42.05.511(b).

of Chugach Electric, not Plaintiffs.

In conclusion, Plaintiffs have failed to meet their burden of demonstrating to the Court that injunctive relief is warranted. Plaintiffs' motion for Motion for a Temporary Restraining Order at Docket No. 4 is therefore **DENIED**.

Dated at Anchorage, Alaska, this 19th day of December, 2006.

/s/ Timothy Burgess _____

Timothy M. Burgess
United States District Judge