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PROFESSIONAL FIREFIGHTERS ASSOCIATION OF OMAHA, LOCAL 385, AFL-CIO CLC, APPELLEE AND CROSS-APPELLANT, V. CITY OF OMAHA, NEBRASKA, A MUNICIPAL CORPORATION, ET AL., APPELLANTS AND CROSS-APPELLEES.

803 N.W.2d 17

Filed September 9, 2011. No. S-10-710.

1. **Justiciable Issues.** Justiciability issues that do not involve a factual dispute present a question of law.
2. **Statutes.** Statutory interpretation is a question of law.
3. **Appeal and Error.** An appellate court resolves questions of law independently of the determination reached by the court below.
4. **Commission of Industrial Relations: Jurisdiction.** In an appropriate case, the Commission of Industrial Relations may enter temporary orders affecting the wages or changing the hours or terms and conditions of employment of an employee pending the resolution of a labor dispute.
5. **Moot Question.** Mootness refers to events occurring after the filing of a suit which eradicate the requisite personal interest in the resolution of the dispute that existed at the beginning of the litigation.
6. **Moot Question: Words and Phrases.** A moot case is one which seeks to determine a question which does not rest upon existing facts or rights, in which the issues presented are no longer alive.
7. **Moot Question.** Unless an exception applies, a court or tribunal must dismiss a moot case when changed circumstances have precluded it from providing any meaningful relief because the litigants no longer have a legally cognizable interest in the dispute's resolution.
8. **Injunction.** The purpose of an injunction is the restraint of actions which have not yet been taken. Remedy by injunction is generally preventative, prohibitory, or protective, and equity will not usually issue an injunction when the act complained of has been committed and the injury has been done.
9. **Declaratory Judgments: Moot Question.** A declaratory judgment action becomes moot when the issues initially presented in the proceedings no longer exist or the parties lack a legally cognizable interest in the outcome of the action.
10. **Declaratory Judgments: Justiciable Issues.** At the time that a declaratory judgment is sought, there must be an actual justiciable issue.
11. **Justiciable Issues.** A justiciable issue requires a present, substantial controversy between parties having adverse legal interests susceptible to immediate resolution and capable of present judicial enforcement.
12. **Courts: Judgments.** In the absence of an actual case or controversy requiring judicial resolution, it is not the function of the courts to render a judgment that is merely advisory.
13. **Moot Question: Public Officers and Employees: Appeal and Error.** The public interest exception to the rule precluding consideration of issues on appeal because of mootness requires the consideration of the public or private nature

of the question presented, the desirability of an authoritative adjudication for guidance of public officials, and the likelihood of recurrence of the same or a similar problem.

Appeal from the District Court for Douglas County: J. PATRICK MULLEN, Judge. Appeal dismissed.

Paul D. Kratz, Omaha City Attorney, and Bernard J. in den Bosch for appellants.

John E. Corrigan, of Dowd, Howard & Corrigan, L.L.C., for appellee.

HEAVICAN, C.J., CONNOLLY, GERRARD, STEPHAN, MCCORMACK, and MILLER-LERMAN, JJ.

MCCORMACK, J.

NATURE OF CASE

On December 21, 2009, the Commission of Industrial Relations (Commission) was presented with an industrial dispute between the Professional Firefighters Association of Omaha, Local 385 (Local 385), and the City of Omaha, Nebraska, and its fire chief, mayor, and individual city council members (collectively City). Prior to resolution of the industrial dispute, the Commission issued a status quo order on December 23, 2009, pursuant to Neb. Rev. Stat. § 48-816 (Reissue 2010). The status quo order required the City to adhere to the employment terms in place at that time, pending final determination of the issues encompassed by the industrial dispute. On January 7, 2010, Local 385 instituted proceedings in the district court for Douglas County and alleged that the City was in violation of the status quo order. The district court ultimately entered an order on June 17, finding that the City was in violation of the status quo order by failing to retain the required minimum number of fire personnel. The district court's order also determined that the City was not in violation of the status quo order by failing to maintain a specified number of fire captains, based on the Commission's previous determination that the issue was one of management prerogative. The City appeals the order of the district court, and Local 385 cross-appeals.

BACKGROUND

Local 385 and the City negotiated the terms of a 2007 collective bargaining agreement (CBA), the terms of which are at issue in this case. The minimum staffing agreement was provided in article 45 of the CBA. The CBA also stated that the City would staff a minimum of 657 sworn fire personnel pursuant to the "call-back" provisions dictated in article 46. Article 46, section 1, provided:

> The City shall call back from the list of employees who have voluntarily agreed to work trade time with the City to comply with the minimum staffing requirements of Article 45. With the exception to calling back such trade time volunteers, the City will be under no obligation for the below minimum staffing requirements as long as the total staffing levels meet or exceed . . . 657 sworn personnel, not including management or recruits in training, after December 31, 2006 . . . .

The CBA also provided that the City was required to assign a minimum of 39 paramedic captains and to staff a total of 150 captains, pursuant to the promotion procedure dictated in article 32. Article 32, section 9, paragraph 5, stated:

> The intent of the [promotion] procedures is to create a process whereby the minimum number of Captains in Suppression, Captains in any of the Bureaus, and Captain Paramedics always remains the same, to wit:
>
> 39 Paramedic Captains assigned to Medic Units
>
> 111 Captains assigned to Suppression Companies
>
> 25 Captains assigned to the Bureau
>
> These numbers will be adjusted based upon the number of Captains positions needed in the labor agreement in 2005, 2006, and 2007.

Under this provision and article 45, section 1, the City agreed to staff a combined minimum of 150 captains assigned to fire suppression and medic units. The CBA expired on December 29, 2007. The parties were unable to reach an agreement regarding terms and conditions of employment for the December 31, 2007, to December 29, 2008, contract year.

PROCEDURAL BACKGROUND

Local 385 invoked the jurisdiction of the Commission pursuant to Neb. Rev. Stat. § 48-818 (Reissue 2010), seeking resolution of the industrial dispute concerning wages and conditions of employment for the 2007-08 contract year. On December 23, 2008, the Commission issued its findings and order resolving the employment issues raised in Local 385's petition in case No. 1173. The order provided "Unit Staffing Requirements — Engine Companies and Truck Companies assigned and in-service all at the rate of 4 staff members."

Both parties timely filed requests for a posttrial conference pursuant to § 48-816(7)(d). Pursuant to this statute, the Commission's December 23, 2008, order was not made final pending completion of the posttrial conference. Following the conference, the Commission issued a final order in case No. 1173 on February 18, 2009, which established the terms of employment for the 2007-08 contract year. The order addressed the terms of employment raised in Local 385's original petition, including staffing requirements. It stated:

> The [City] requests the Commission to order that it is the prevalent practice to have no special requirements with regard to ambulance staffing. [Local 385] requests the Commission to keep the current practice in place where a Captain is staffed on ambulance. [I]t is clear that ambulances should be staffed with 2 employees. The remainder of the staffing requirements are management prerogative and will not be ordered.

The February 18 final order also addressed promotional placement and call-back pay. Regarding promotion procedures, the Commission ordered that "[p]romotional placement will be according to the current practice Omaha has in place." The final order does not address the call-back provision articulated in article 46 of the 2007 CBA. Nor does the final order indicate that the Commission interpreted the promotional or call-back provisions in the 2007 CBA to impose any staffing requirements. The final order further stated that "[a]ll other terms and conditions of employment for the 2007-2008 contract year

shall be as previously established by the agreement of the parties and by orders and findings of the Commission."

Prior to expiration of the 2009 contract year, the parties were again unable to reach an agreement regarding terms and conditions of employment. On December 21, 2009, Local 385 filed an industrial dispute with the Commission in case No. 1227, seeking resolution of the 2008-09 contract terms pursuant to § 48-818. At the same time that Local 385 filed its petition, it moved for a temporary order known as a status quo order pursuant to § 48-816. Following a hearing on the matter, the Commission sustained Local 385's motion. In its status quo order, issued December 23, the Commission noted that § 48-816 authorizes the Commission to make temporary orders necessary to preserve and protect the status of the parties pending final determination of the issues. In its order, the Commission did not explicitly state the terms and conditions protected by the status quo order. It stated: "The [City] shall not alter the employment status, wages, and terms and conditions of employment of the employees subject to the Petition herein and shall preserve and protect the status of the parties, property, and public interest involved, pending final determination of the issues raised by the Petition herein."

On January 7, 2010, in the district court for Douglas County, Local 385 filed a declaratory judgment action alleging that the City was in violation of the status quo order entered by the Commission and requesting injunctive relief. Local 385's petition maintained that the City was bound by the original, expired CBA as modified by the subsequent orders of the Commission. Local 385 claimed, among other things, that the City had violated the status quo order by failing to maintain a minimum of 657 fire personnel and by failing to promote captains to reach the level of 150 on suppression units. Local 385 requested that the court order the City to cease and desist from failing to call back and promote employees to fill vacancies.

The court issued an order on February 8, 2010, which found that the City had failed to comply with the status quo order in part. The court directed the City to take immediate steps to comply with the status quo order, but determined the City had acted in good faith "under certain budgetary constraints," and

no contempt finding was made at that time. However, the order stated that a finding of contempt would issue if the City failed to take the required action within 3 days of the order.

On May 7, 2010, Local 385 filed a "Further Application for Order to Show Cause and Notice of Hearing," in which Local 385 alleged that the City remained in violation of the status quo order and requested that the court hold the City in contempt. A hearing was held, and the court received evidence regarding the number of captains the City was required to staff, the required promotions to battalion chief, and the number of firefighters the City was required to staff. The court entered an order on June 17, from which the City ultimately appealed. The court found that the City was in violation of the status quo order. The court stated:

> There is no question that the City is not replacing the . . . CBA . . . personnel who have retired or otherwise left City employment. Regardless of the City's reasoned arguments on the issue, the City's failure to maintain 657 positions is a material breach of the City's obligation under the status quo order.

The court determined, however, that the City was not required to staff 150 captains to medic units and fire suppression. To make this determination, the district court interpreted the terms of the 2007 CBA in conjunction with the modifications and extensions imposed by the December 23, 2008, findings and order and the February 18, 2009, final order issued by the Commission in case No. 1173. Specifically, the court relied on the February 18 final order issued by the Commission, which determined that the City was required to staff ambulances with two employees, but that the remainder of the staffing requirements is management prerogative. The district court found that the Commission's order eliminated the requirement that the City staff 39 medic unit captains. Therefore, pursuant to the Commission's modifications of the term, the City was required to staff only 111 captains, not 150. The court stated:

> The City argues that the lack of requirement that a captain be a part of a medic unit eliminates the need for the total number of captains as agreed to in the CBA. The [Commission's] amendment of the captain requirement on

> a medic unit compels the conclusion that the total number of captains may be reduced from the obligation of 150 in suppression companies and medic units to 111 in suppression companies.

The City timely appealed the court's finding that it violated the status quo order. Local 385 cross-appealed the finding that the City is not required to staff a minimum of 150 captains assigned to fire suppression.

During the pendency of this appeal, the Commission oversaw further proceedings to resolve the parties' industrial dispute regarding the 2008-09 contract year, filed in December 2009, case No. 1227. On January 4, 2011, the Commission entered its findings and order in the case. Both parties again filed requests for a posttrial conference pursuant to § 48-816(7)(d). The parties' requests to amend the January 4 findings and order were sustained in part, and overruled in part. The Commission issued its final order in case No. 1227 on February 17, 2011. The final order made extensive findings regarding wages and employment terms and conditions for the 2008-09 contract year. However, the Commission declined to make any findings or order any terms with regard to minimum staffing requirements. The final order states:

> Staffing proposed bargaining topics such as "daily staffing", "staffing by rank", and "overall staffing" are management prerogatives as stated previously in the Commission's Findings and Order, issued on January 4, 2011. The Commission does not have jurisdiction over management prerogatives. *Nebraska Dept. of Roads Emp. Ass'n v. Dept. of Roads*, 189 Neb. 754, 205 N.W.2d 110 (1973); *IBEW v. City of Fairbury*, 6 CIR 205 (1982). The Commission cannot order any change because the Commission lacks the authority to do so. "Daily staffing", "staffing by rank", and "overall staffing" determinations are management prerogatives, properly within the City of Omaha's prerogative to make changes accordingly.

Neither the findings and order issued January 4, 2011, nor the final order issued February 17 appear to address any staffing requirements implied by the promotion and call-back procedures provided in the 2007 CBA. The final order also states

that "[a]ll other terms and conditions of employment for the 2008-2009 contract year shall be as previously established by the agreement of the parties and by orders and findings of the Commission." Following the resolution of the industrial dispute, the City filed a "Suggestion of Mootness" in this court, to which Local 385 filed an objection.

ASSIGNMENTS OF ERROR

The City assigns that the district court erred in determining that the City violated the status quo order entered by the Commission when the City failed to maintain a total of 657 sworn fire personnel. Local 385 cross-appeals, and assigns that the district court erred in determining that the City did not violate the status quo order when the City failed to maintain a minimum of 150 captains assigned to fire suppression.

STANDARD OF REVIEW

[1-3] Justiciability issues that do not involve a factual dispute present a question of law.[1] Statutory interpretation is a question of law.[2] We resolve questions of law independently of the determination reached by the court below.[3]

ANALYSIS

The City argues that upon the filing of the final order on February 17, 2011, the wages and terms and conditions of employment at issue in this case were fully established by the Commission and that the condition detailed in the temporary status quo order has been met, as there has been a final determination of the issues. As a result, upon entry of the final order, the City asserts that the status quo order was dissolved and that any issues as to its application or compliance have been rendered moot.

Pendency of Status Quo Order

[4] Before we address the issue of mootness, it is necessary to discuss the temporary nature of status quo orders issued by

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[1] *Wetovick v. County of Nance*, 279 Neb. 773, 782 N.W.2d 298 (2010).

[2] *Id.*

[3] *Id.*

the Commission. The Commission entered the status quo order pursuant to authority granted by § 48-816(1). It states, in relevant part:

> The [C]ommission shall have power and authority upon its own initiative or upon request of a party to the dispute to make such temporary findings and orders as may be necessary to preserve and protect the status of the parties, property, and public interest involved pending final determination of the issues.

In *Transport Workers v. Transit Auth. of Omaha*,[4] this court determined whether the Commission has the authority to enter a temporary status quo order similar to the order at issue in the present case. We noted that "reducing employees' wages or changing the hours or terms and conditions of employment during an industrial dispute might interfere with or coerce employees attempting to exercise their right to bargain" under the Industrial Relations Act (Act).[5] We held that the Commission has the authority to enter a temporary order to avoid such interference.[6]

In *Transport Workers*, we recognized that the Act does not give the Commission any authority to compel a governmental employer to enter into a contract if the governmental employer chooses not to do so.[7] But the Commission does have the authority to extend the terms and conditions of an expired contract to effectuate good faith negotiation:

> [E]ven though the [Commission] cannot compel the governmental employer to enter into a contract, it is clear that the [Commission] can enter a final order setting wages, hours, and terms and conditions of employment which are binding upon the employer, and which, in every sense, is therefore a contract, though none may formally exist between the parties. [W]hile the bargaining agreement

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[4] *Transport Workers v. Transit Auth. of Omaha*, 216 Neb. 455, 344 N.W.2d 459 (1984).

[5] *Id.* at 459, 344 N.W.2d at 462.

[6] See *id.*

[7] See Neb. Rev. Stat. § 48-810.01 (Reissue 2010).

> between the parties may have expired, the employment contract between the parties goes on.[8]

Section 48-816(1) grants the Commission discretionary authority, when it appears appropriate, to order that the status quo of the parties be retained *until the dispute is resolved*.[9] This court has interpreted status quo orders as a means to preserve the collective bargaining position of the employees engaged in a pending industrial dispute.[10] Such authority fulfills the public policy of the Act to ensure the uninterrupted and continued functioning and operation of governmental services. The language of § 48-816 is plain, and it specifically limits temporary orders issued by the Commission to the pendency of the dispute. Status quo orders are therefore binding on the parties only until the dispute has been resolved.

Mootness

[5-7] We must determine whether the resolution of the industrial dispute between Local 385 and the City has rendered this appeal concerning the Commission's status quo order moot. Mootness refers to events occurring after the filing of a suit which eradicate the requisite personal interest in the resolution of the dispute that existed at the beginning of the litigation.[11] A moot case is one which seeks to determine a question which does not rest upon existing facts or rights, in which the issues presented are no longer alive.[12] Unless an exception applies, a court or tribunal must dismiss a moot case when changed circumstances have precluded it from providing any meaningful relief because the litigants no longer have a legally cognizable interest in the dispute's resolution.[13]

The June 17, 2010, order of the Douglas County District Court, which found the City in violation of the status quo

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[8] *Transport Workers v. Transit Auth. of Omaha, supra* note 4, 216 Neb. at 460, 344 N.W.2d at 463.

[9] *Id.*

[10] *Id.*

[11] *Wetovick v. County of Nance, supra* note 1.

[12] *Rath v. City of Sutton*, 267 Neb. 265, 673 N.W.2d 869 (2004).

[13] *Wetovick v. County of Nance, supra* note 1.

order, is the *only* order that has been appealed by either party. The only issues before us concern the City's alleged violations of temporary terms imposed by the status quo order. As noted above, the Commission's February 17, 2011, order resolved the industrial dispute and dissolved the status quo order. The February 17 order displaced the temporary conditions and terms protected by the status quo order and effectively established the terms and conditions of employment for the 2008-09 contract year.

The issues determined by the February 17, 2011, final order are not before us on appeal, as it was entered while the present appeal was pending. As neither party appealed the February 17 order, this court has no authority to determine the appropriateness of the Commission's resolution of the industrial dispute or the conditions and terms of employment established by the February 17 order. Presumably, following the February 17 final order, the 2008-09 contract terms have been further amended for the 2009-10 and 2010-11 contract years by agreement or by order of the Commission. Accordingly, this appeal does not concern the conditions and terms of employment that now affect the parties.

Nevertheless, Local 385 argues that the instant case has not been rendered moot, because the alleged violations of the status quo order implicate other provisions of the 2007 CBA which remain in place. In particular, Local 385 refers to the rights of bargaining unit members to the benefits of promotion and rehire or recall as established under article 12 of the 2007 CBA. Under article 12, section 3, employees who have been laid off are eligible for reemployment for a period of 7 years. Local 385 contends that the City was required to hire additional personnel and that the failure to do so stripped the employees that would have been hired of rehire rights. Local 385 asserts that even if such employees were laid off following the February 17, 2011, order, they would still be entitled to a right of rehire.

Local 385's petition requested both injunctive and declaratory relief. Local 385 sought to enjoin the City from failing to maintain a minimum number of captains and firefighters. And they sought a declaration of the City's obligations and Local 385's rights under the status quo order.

[8] As to the request for injunctive relief, the issue has been rendered moot by the February 17, 2011, final order. The purpose of an injunction is the restraint of actions which have not yet been taken.[14] We have said that remedy by injunction is generally preventative, prohibitory, or protective, and equity will not usually issue an injunction when the act complained of has been committed and the injury has been done.[15] The purpose of an injunction is not to afford a remedy for what is past but to prevent future mischief.[16] An injunction is not used for the purpose of punishment or to compel persons to do right but merely to prevent them from doing wrong.[17] Accordingly, rights already lost and wrongs already perpetrated cannot be corrected by an injunction.[18]

[9-11] The inability of the court to grant the injunction sought does not, by itself, render the declaratory action moot as well.[19] As in any other lawsuit, a declaratory judgment action becomes moot when the issues initially presented in the proceedings no longer exist or the parties lack a legally cognizable interest in the outcome of the action.[20] At the time that the declaratory judgment is sought, there must be an actual justiciable issue.[21] A justiciable issue requires a present, substantial controversy between parties having adverse legal interests susceptible to immediate resolution and capable of present judicial enforcement.[22]

[12] According to Local 385, a declaration that the City violated the status quo order presents a justiciable issue because

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[14] *Koenig v. Southeast Community College*, 231 Neb. 923, 438 N.W.2d 791 (1989).

[15] See *Rath v. City of Sutton, supra* note 12.

[16] *Id.* (citing *Putnam v. Fortenberry*, 256 Neb. 266, 589 N.W.2d 838 (1999)).

[17] *Id.*

[18] *Id.*

[19] *Id.* (citing *Koenig v. Southeast Community College, supra* note 14).

[20] *Id.* (citing *Putnam v. Fortenberry, supra* note 16).

[21] *Id.*

[22] *Id.*

it can then seek to recover backpay and other lost benefits for Local 385 employees who had rights to rehire and promotion that were not honored by the City during the pendency of the status quo order. In essence, Local 385 seeks an advisory opinion which it can use for further action that it may or may not take in the future, apparently to recover damages which were neither claimed nor proved below. In the absence of an actual case or controversy requiring judicial resolution, it is not the function of the courts to render a judgment that is merely advisory.[23]

In *Koenig v. Southeast Community College*,[24] this court faced a situation in which the plaintiffs brought an action to enjoin the closure of a community college campus and the relocation of its programs to another campus. At the time the action was brought, the resolutions of the college board of governors had been implemented only to a small degree. By the time the appeal was submitted to this court, the closing and relocation at issue had been completely accomplished. We ultimately determined:

> At this stage of the litigation, judicial enforcement of any decree attempting to eliminate the reallocations, renovations, installations, expenditures, and transfer would be impossible. A declaratory judgment could no more prohibit what has taken place than could an injunction. The case is moot as to declaratory judgment as well as to injunction.[25]

Similarly, in the present case, the declaratory judgment Local 385 seeks would suffer from the same infirmities as an injunction. A declaration of the City's obligations under the status quo order would not undo what has already been done. Since the City's alleged violations of the temporary status quo order, that status quo order has expired and the parties have proceeded to bargain over new terms in subsequent contracts. Current staffing decisions have likely been made based on

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[23] *City of Fremont v. Kotas*, 279 Neb. 720, 781 N.W.2d 456 (2010).

[24] *Koenig v. Southeast Community College, supra* note 14.

[25] *Id.* at 926, 438 N.W.2d at 795.

terms and conditions that are not before us on this appeal. The parties' employment relationship and bargaining positions have continued to change and evolve with the passage of time and changes in circumstance. Thus, the question before us does not rest on existing facts or rights—the issues presented are no longer alive. Local 385's request for declaratory judgment is also moot.

We note that in its arguments on appeal, Local 385 makes some references to possible damages. When properly pled and proved, claims for damages for harm caused by past practices are not generally moot.[26] But Local 385 did not seek damages for the City's alleged violations. In order to be entitled to damages, Local 385 was required to specifically request such relief in its petitions.[27]

Of course, given the temporary nature of the status quo order and the fact that terms were subsequently amended upon expiration of that order, even if Local 385 had requested monetary damages, establishing such relief would have likely proved tenuous. While damages need not be proved with mathematical certainty, neither can they be established by evidence which is speculative and conjectural.[28]

In this case, a determination of which employees, if any, were entitled to monetary damages would require a number of assumptions—that all personnel in place during the pendency of the status quo order retained their employment and rank; that no employee was fired, moved, or died; and that each employee that might have been rehired or promoted was at that time able, willing, and available to take the job. Also, awarding such relief would necessitate an interpretation of subsequent terms and conditions of employment and their many possible implications for the obligations imposed by the status quo order. As previously noted, the current employment terms are

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[26] See *Myers v. Nebraska Invest. Council*, 272 Neb. 669, 724 N.W.2d 776 (2006).

[27] See, *Rath v. City of Sutton, supra* note 12; *Alexander v. School Dist. No. 17*, 197 Neb. 251, 248 N.W.2d 335 (1976).

[28] *Gary's Implement v. Bridgeport Tractor Parts*, 281 Neb. 281, 799 N.W.2d 249 (2011).

not part of the record in this case. No court could prohibit what has already taken place, and the limited issues presented here are insufficient to allow any court to restore the situation as it existed at the time the status quo order was issued. This appeal is moot.

Public Interest Exception

Local 385 argues that even if this court should agree that the matter is moot, it should still be reviewed, because it involves a matter affecting the public interest and because other rights and liabilities may be affected by its determination. Local 385 first contends that a decision of mootness would be detrimental to the purpose of § 48-816 and Neb. Rev. Stat. § 48-819.01 (Reissue 2010).

Section 48-819.01 states:

> Whenever it is alleged that a party to an industrial dispute has engaged in an act which is in violation of any of the provisions of the . . . Act, or which interferes with, restrains, or coerces employees in the exercise of the rights provided in such act, the [C]ommission shall have the power and authority to make such findings and to enter such temporary or permanent orders as the [C]ommission may find necessary to provide adequate remedies to the injured party or parties, to effectuate the public policy enunciated in section 48-802, and to resolve the dispute.

Local 385 asserts that if the City is allowed to engage in conduct in violation of the status quo order entered by the Commission by simply suggesting that the matter is moot after the Commission enters its order resolving the dispute, the whole process of allowing protections under the temporary order provisions of the Act has been nullified.

Local 385 is not without redress, however, and correctly notes that the Commission has the authority to enter orders necessary to provide adequate remedies for any injury proved before it under such circumstances. The Commission's authority under § 48-819.01 has no bearing on the instant case. Local 385 did not bring an action under this provision, and it is therefore inapposite to our justiciability analysis.

[13] Local 385 next claims that the public interest exception to the mootness doctrine should apply. The public interest exception to the rule precluding consideration of issues on appeal because of mootness requires the consideration of the public or private nature of the question presented, the desirability of an authoritative adjudication for guidance of public officials, and the likelihood of recurrence of the same or a similar problem.[29] Were we to reach the merits of the instant appeal, it would require an analysis of complex factors which are unique to this case. Such factors would include the proper interpretation of the minimum staffing, promotion, and call-back provisions of the original CBA; an interpretation of those terms as modified by each subsequent order issued by the Commission; a determination of which terms were encompassed by the status quo order; and a finding of whether the actions of the City amounted to a violation of those terms. It is unlikely that we will be presented with a similar factual situation. Accordingly, there is no likelihood of recurrence of the same or a similar problem, and we decline to apply the public interest exception to the mootness doctrine.

CONCLUSION

For the foregoing reasons, we conclude that the instant appeal is moot. Accordingly, the appeal is dismissed.

APPEAL DISMISSED.

WRIGHT, J., not participating.

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[29] *Stoetzel & Sons v. City of Hastings*, 265 Neb. 637, 658 N.W.2d 636 (2003).

CHAD A. HOFFERBER, APPELLEE AND CROSS-APPELLANT, V. HASTINGS UTILITIES AND EMC INSURANCE, APPELLANTS AND CROSS-APPELLEES.

803 N.W.2d 1

Filed September 9, 2011. No. S-10-894.

1. **Workers' Compensation: Appeal and Error.** A judgment, order, or award of the Workers' Compensation Court may be modified, reversed, or set aside only