


Following a non-evidentiary hearing and argument on 12/11/08, all parties present, and review of all file materials including the voluminous affidavits submitted by both sides, Plaintiffs' Motion for a Preliminary Injunction is **DENIED**, for the following reasons:

The court finds no reasonable likelihood of success on the merits of Count I (Physical Harm to Officials) and Count II (Liability Exposure to Officials Due to the PGHS) of the Complaint, and only a very limited likelihood of success on the merits of Count III (Interference with Contractual Relations). The record before the court at this time suggests Defendant's adoption of the PGHS Rule was arrived at in a deliberative and collaborative process which does not demonstrate arbitrary or capricious action, or for that matter any action facially in violation of law. The fact that Plaintiffs have lost the preliminary rounds of a philosophical battle in their industry arena does not reasonably demonstrate on this record that the arguable shifting of risk represented by the new Rule constitutes a violation of public policy, or is otherwise unlawful, such that a court should intervene by means of Rule 65 as Plaintiffs have argued.

The court respects the safety and reputation concerns expressed by the Plaintiffs. However, the court finds Plaintiffs have not met their burden to demonstrate the required level of imminent, non-speculative, substantial and irreparable harm to their physical, reputation, or financial interests that may not be readily remediable by money damages or other final judgment in equity. Hull Mun. Lighting Plant v. Massachusetts Mun. Wholesale Elec. Co., 399 Mass. 640, 643-45 (1987). This heated industry dispute has been brewing for at least two years, and issue was joined at the latest by the time of post-season play in the winter of 2007-2008. While the court appreciates the parties may have been attempting to negotiate, Plaintiffs have waited until the eve of regular season play this year to seek to disrupt the new status quo by means of injunction. I find, given Plaintiffs' limited likelihood of success on the merits, that they have failed to carry their burden with respect to the elements for injunctive relief. Thus an injunction may not properly issue. John T. Callahan & Sons, Inc. v. City of Malden, 430 Mass. 124, 130-31 (1999); Packaging Indus. Group, Inc. v. Cheney, 380 Mass. 609, 616-617 (1990).

That said, the court sees no reason why another entire season of play need go by without resolution of this matter. Defendant has indicated it will be serving a motion to dismiss by Monday, December 15, 2008. The parties shall file with the court no later than Monday, December 22, 2008 -- jointly if at all possible but separately if necessary -- a proposed special Tracking Order for this case including: briefing and argument schedule for any dispositive motions; any proposed necessary discovery; anticipated disputes of material fact; and all other matters as may aid in a speedy disposition of the case on the merits, pursuant to Mass.R.Civ.P. 16.

DATED: December 11, 2008


Christine M. Roach
Associate Justice