

**CIRCUIT AND SUPERIOR COURTS
38TH JUDICIAL DISTRICT
ALLEN COUNTY, INDIANA**

**ANITA STULLER and AMERICAN
FEDERATION OF STATE, COUNTY and
MUNICIPAL EMPLOYEES, COUNCIL 62
(AFSCME),
Plaintiffs,**

CAUSE NUMBER: 02D01-0512-PL-545

vs.

ORDER OR JUDGMENT OF THE COURT

**MITCHEL E. DANIELS, JR., Governor of the
State of Indiana, PETER A. BISBECOS,
Director of the Division of Disability and
Rehabilitation Services, and MITCHEL ROOB
Secretary of the Indiana Family and Social
Services Administration,
Defendants.**

On December 20, 2005, Plaintiffs appeared by Attorneys Mary Jane Lapointe, Gary Price, and Daniel Serban. The Defendants appeared by Attorneys Steven Jackson and Michael James. Plaintiffs presented evidence and rested. The Defendants presented evidence and rested. The Plaintiffs presented rebuttal evidence. The Defendants presented sur rebuttal evidence. The Court took the matter under advisement at the conclusion of the evidence.

The Court, having taken this matter under advisement, enters the following Memorandum Decision:

MEMORANDUM DECISION

In order to obtain a preliminary injunction the moving party must show by a preponderance of the evidence that: (1) the movants' remedies at law are inadequate, thus causing irreparable harm pending resolution of the substantive action; (2) the movant has a reasonable likelihood of success at trial by establishing a *prima facie* case; (3) the threatened injury to the movant outweighs the potential harm to the non-movant if an injunction is granted; and (4) the public interest would not be disserved. *Mayer v. BMR Properties, LLC*, 830 N.E.2d 971 (Ind.Ct.App. 2005). An injunction may not be granted if the movant fails to prove any one of the elements.

Plaintiffs have alleged that Family and Social Services Administration (FSSA) failed to follow the public bidding process as required by I.C. 5-23-5-1 *et. seq.* Defendants counter that FSSA's actions in procuring the professional services of Liberty Health Care Corporation were authorized pursuant to I.C. 5-22-6-1. Defendants argue, in essence, that the public bidding process as required under I.C. 5-23-5-1 was not required as I.C. 5-23-5-1 is inapplicable.

The Court agrees with Defendants and finds that FSSA's actions in procuring Liberty's professional, personal services were authorized pursuant to I.C. 5-22-6-1, which provides that:

The purchasing agency of a governmental body may purchase public services using any procedure the governmental body or the purchasing agency of the governmental body considers appropriate.

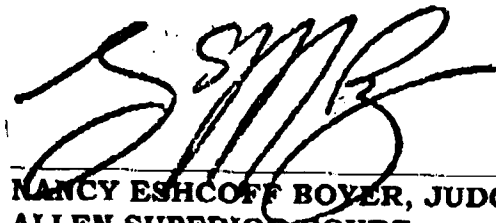
As a result, the bidding process I.C. 5-23-5-1 is inapplicable.

Further, the Plaintiffs have failed to prove that the Plaintiffs in this action, current worker Anita Stuller and the American Federation of State, County and Municipal Employees, Council 62, would suffer irreparable harm because Plaintiffs' remedies at law were inadequate. Plaintiffs failed to respond to the questions asked by the Court, specifically inquiring which of Plaintiffs' remedies at law were inadequate. The damages suffered by Plaintiffs in this action are monetary. Thus, the legal damages are adequate. The movants in this case have failed to prove that their remedies at law were inadequate, thus causing irreparable harm pending resolution of the substantive action.

Plaintiffs, then, have failed to show either a reasonable likelihood of success at trial or that Plaintiffs' remedies at law are inadequate.

As such, Plaintiffs' request for a preliminary injunction is DENIED in its entirety.

Dated: December 22, 2005



**NANCY ESHCOFF BOYER, JUDGE
ALLEN SUPERIOR COURT**

MANNER OF NOTICE:

() WITH COPY PURSUANT TO T.R. 72 TO BE SERVED BY:
 COURT CLERK OTHER:

PROOF OF NOTICE UNDER TRIAL RULE 72(D)

A copy of the entry was served either by mail to the address of record, deposited in the attorney's distribution box, or personally distributed to the following persons:

Attorney Steven L. Jackson, Box #61
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Court Packet - 2

DATE OF NOTICE: December 22, 2005

INITIALS OF PERSON WHO NOTIFIED PARTIES: ifs COURT__ CLERK__ OTHER