

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

UE LOCAL #893/
IOWA UNITED PROFESSIONALS,
Complainant/
Certified Employee Organization,

and

STATE OF IOWA
(DEPARTMENT OF
ADMINISTRATIVE SERVICES),
Respondent/Public Employer.

CASE NO. 100803

STATE OF IOWA
(DEPARTMENT OF
ADMINISTRATIVE SERVICES),
Complainant/Public Employer,

and

UE LOCAL #893/
IOWA UNITED PROFESSIONALS,
Respondent/
Certified Employee Organization.

CASE NO. 100804

RULING AND ORDER

On April 6, 2017 UE Local #893/Iowa United Professionals filed a motion to stay proceedings with the Public Employment Relations Board (PERB or Board) on the above-referenced prohibited practice complaints, which were filed in February and subsequently consolidated for hearing. Although no evidentiary hearing on the merits has been scheduled, UE requests a stay of any PERB proceedings on these cases pending a determination by the Polk County District Court on UE's petition to enforce what it alleges is a valid collective bargaining agreement (CBA) between UE and the State of Iowa. UE claims that if UE prevails in its district court action, it will render both the

State and UE's complaints with PERB duplicative, moot, and/or superfluous. The State resists UE's motion and asserts that UE is required to exhaust its administrative remedies with PERB and that PERB has primary jurisdiction over the issues presented by both the prohibited practice complaints and the district court action.

Pursuant to notice, oral arguments on the motion to stay were presented to the Board telephonically on May 26, 2017. Attorney Nate Willems represented UE and attorney Jeff Edgar represented the State. Prior to the scheduling of oral arguments, the State filed a brief in support of its resistance on April 14, 2017 and UE filed a reply brief on May 9, 2017.

Based on our review of the parties' briefs and oral arguments, UE's motion to stay the prohibited practice proceedings in PERB Case Nos. 100803 and 100804 is GRANTED.

I. BACKGROUND AND PROCEEDINGS

UE Local #893/Iowa United Professionals and the State of Iowa filed their respective prohibited practice complaints on February 15 and 16, 2017 with the Board pursuant to Iowa Code section 20.11 (2017) and PERB rule 621—3.1(20). The parties filed their complaints during the course of their negotiations for a successor collective bargaining agreement to be effective July 1, 2017 for the "social services" bargaining unit and the "science" bargaining unit of state employees. The two complaints were consolidated due to their common questions of law and fact.

For the purposes of a determination on the pending motion, we assume the accuracy of some limited relevant dates plead by the parties as follows: On or about May 17, 2016, the parties met and agreed on a schedule of dates for bargaining and completion of impasse procedures, which included mediation on February 16 and arbitration on February 27, 2017; UE presented its initial bargaining position to the State on December 6, 2016; the State presented its initial position to UE on December 16; and the parties met on January 10, 2017. PERB provided a list of arbitrators to the parties on February 7, 2017. UE claims it accepted the State's unrevoked initial offer on February 10, 2017.

2017 Iowa Acts, House File 291, became effective upon enactment on February 17, 2017, and included dramatic amendments to Iowa Code chapter 20. The amendments were not immediately applicable to certain CBAs, however, including those that had been ratified pursuant to statute or had become effective before the legislation's effective date.

UE's complaint alleges that the State committed prohibited practices within the meaning of Iowa Code sections 20.10(1) and 20.10(2)(a), (e) and (f) when, after UE accepted the State's unrevoked initial offer, the State refused to ratify its initial offer after receiving notice of UE's acceptance. The State denies its commission of a prohibited practice and affirmatively states that UE rejected the State's initial offer when the parties met on January 10, 2017.

The State's complaint alleges that UE committed prohibited practices within the meaning of Iowa Code section 20.10(3)(c) and (d) when UE did not participate in impasse procedures in good faith on the dates previously agreed

upon by the parties, including mediation on February 16, 2017 and the selection of an arbitrator from a PERB-provided list. UE denies its commission of a prohibited practice, affirmatively stating that it informed the State of UE's acceptance of the State's initial offer on February 10 and notified the State of UE's ratification of the agreement on February 17, thereby making mediation and arbitration unnecessary.

On February 21, 2017, UE filed a petition in Polk County District seeking enforcement of what UE alleges is a valid collective bargaining agreement based on UE's acceptance of the State's initial offer. In response, the State filed a motion to dismiss on the grounds that UE failed to exhaust its administrative remedies and that PERB has primary jurisdiction over the matter. The Court denied the State's motion on May 15, 2017, concluding that the case was not a challenge to agency action (*i.e.* one of judicial review where there may be preliminary administrative remedies to exhaust); rather, the issue was the existence of an enforceable collective bargaining agreement – a matter for the Court to decide. *UE Local 893/IUP v. State of Iowa*, Case No. LACL137250 (Polk Cnty. Dist. Ct.) (ruling 5/15/2017).

UE filed its motion to stay the prohibited practice proceedings prior to the district court ruling, but did not specify a legal basis for the motion. The State resisted UE's motion. In the absence of specified legal authority, the State viewed UE's motion as one filed pursuant to Iowa Code section 17A.19(5)(c) concerning stays of agency action during the pendency of a judicial review proceeding and argued UE did not meet the multi-factor test set out in

the statute. In reply, UE argued that the Board should grant its motion in the interest of judicial economy based upon the four principles of the PERB-adopted *Collyer* doctrine, which UE argues are equally applicable to its motion. *See Collyer Insulated Wire Co.*, 192 N.L.R.B. 837, 77 LRRM 1931 (1971). PERB has applied *Collyer* to delay prohibited practice proceedings pending resolution of common issues presented by ongoing grievance arbitration proceedings. UE argued that similarly, the existence of a CBA is at the heart of all the disputes, that court enforcement is available, and there is no reason to believe the Court will not adequately resolve the issue.

In oral arguments, both parties agreed that should the Court determine there is a valid and enforceable CBA, their prohibited practice claims and requested remedies are moot.

II. ANALYSIS

UE's motion is presumably filed pursuant to PERB rule 621—2.19(20). It seeks a stay of the prohibited practice proceedings pending a district court decision on its separate action to enforce the terms of a collective bargaining agreement between the parties. *See UE Local 893/IUP v. State of Iowa*, Case No. LACL137250 (Polk Cnty. Dist. Ct.). UE's motion is distinct from an Iowa Code section 17A.19(5) motion to stay the execution or enforcement of agency action pending a decision on judicial review of agency action.

For this reason, we think it appropriate to base our determination of whether to grant or deny UE's motion on the *Collyer* pre-arbitral deferral doctrine, rather than the four-prong test applicable to stays of the execution or

enforcement of an agency decision already made. *See AFSCME Council 61*, 84 PERB 2574 (Board's adoption of *Collyer* deferral doctrine). UE has not sought judicial review of any agency action. The question before the district court is instead whether there is an enforceable collective bargaining agreement. The *Collyer* doctrine concerning an agency's deferral to grievance arbitration proceedings is readily applicable to the analogous circumstances at hand.

The Board adopted *Collyer* to defer a prohibited practice proceeding to arbitration where AFSCME had alleged that the State unilaterally changed its employee leave policy. *AFSCME*, 84 PERB 2574. The Board indicated it would defer to the grievance procedures agreed to by the parties where (1) the issue is susceptible to resolution through the grievance arbitration process; (2) the contract and its meaning are at the heart of the dispute; (3) arbitration is available; and (4) there is no reason to believe that arbitration will not adequately resolve both disputes in a manner compatible with the purpose of the Act. *Id.* at 6. The Board granted the motion to defer and retained jurisdiction in the event there remained issues following the arbitration.

Collyer is logically applied here since only the identity of the non-agency decision maker (grievance arbitrator or district court judge) distinguishes the present circumstances from those involved with a motion to defer pending grievance arbitration proceedings. Additionally, the judicial economy served by the *Collyer* doctrine is similar to another doctrine recognized by the Courts to support a motion to stay judicial proceedings. *See First Midwest Corp. v. Corporate Finance Associates*, 663 N.W.2d 888 (Iowa 2003) (doctrine of "comity")

permits a court to stay a pending proceeding if a case involving the same parties and subject matter is pending in the court of another state).

An application of the *Collyer* doctrine to the facts of this case supports a stay of the pending prohibited practice proceedings. The basis for each party's prohibited practice complaint is the other party's actions or inactions in bargaining and impasse procedures. The issue of whether there is a valid CBA between the parties is central to the claims or defenses asserted in both prohibited practice complaints; it is at the heart of the dispute. This issue will seemingly be resolved by the district court.

All of the *Collyer* prerequisites are met. The central issue in the prohibited practice cases is susceptible to resolution in the district court, the existence of a contract is at the heart of the dispute, judicial resolution is available and under way, and there is no reason to believe it will not adequately resolve the disputes. Should the Court conclude that there is a valid and enforceable CBA, the parties admit that their claims and requested remedies are moot or insignificant.

III. CONCLUSION

A tailored application of the *Collyer* doctrine supports UE's motion to stay the prohibited practices during the pendency of the district court proceeding in *UE Local 893/IUP v. State of Iowa*, Case No. LACL137250 (Polk Cnty. Dist. Ct.).

Accordingly, we enter the following:

ORDER


UE's motion to stay is GRANTED. Further proceedings in PERB Case Nos. 100803 and 100804 are deferred pending a final decision by the Polk County District Court in Case No. LACL137250 or until further order of the Board.

DATED at Des Moines, Iowa, this 13th day of June, 2017.

PUBLIC EMPLOYMENT RELATIONS BOARD



Michael G. Cormack, Board Chair



Jamie K. Van Fossen, Board Member



Mary T. Gannon, Board Member