

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

**FORT DODGE COMMUNITY
SCHOOL DISTRICT,
Petitioner,**

v.

**IOWA PUBLIC EMPLOYMENT
RELATIONS BOARD,
Respondent.**

Case No. CVCV 009290

**RULING ON PETITIONER'S
MOTION FOR ASSIGNMENT OF
JUDGE AND/OR CONSOLIDATION
OF CASES**

**FILED
POLK COUNTY, IA.
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CLERK DISTRICT COURT**

On October 16, 2012, the above captioned matter came before the Court, on Petitioner's Motion for Assignment of Judge and/or Consolidation of Cases. Petitioner was represented by Susan Bernau and Respondent was represented by Diana Richeson. After hearing the arguments of counsel and reviewing the court file, including the briefs filed by the parties, the Court enters the following ruling.

On July 30, 2012, Petitioner, Fort Dodge Community School District (hereinafter "FDCSD"), filed a Petition for Judicial Review from a May 23, 2012 Preliminary Ruling from the Iowa Public Employment Relations Board (hereinafter "PERB") stating unused sick leave and severance pay are mandatory topics of negotiation. On July 2, 2012, PERB issued a Formal Ruling on Negotiability Dispute stating "supplemental pay" issues under Iowa Code section 20.9 (2011) are mandatory topics of negotiations. In its Petition for Judicial Review, CSD seeks a reversal of PERB's action and an Order that unused sick leave and severance pay are permissive, not mandatory, topics of negotiation. On August 6, 2012, Petitioner made this Motion for Assignment of Judge and/or Consolidation of Cases pursuant to Iowa Rule of Civil Procedure 1.913. On August 13, 2012, Intervenors Fort Dodge Education Association, Fort Dodge

Maintenance Employees Bargaining Unit, Fort Dodge Education Association, Fort Dodge Secretarial/Clerical Education Association, and Fort Dodge Maintenance Employees Bargaining Unit filed a Resistance to the Motion for Assignment of Judge and/or Consolidation of Cases.

On August 14, 2012, Intervenor, UNI-United Faculty, filed a Resistance to the Motion for Assignment of Judge and/or Consolidation of Cases. PERB filed a Resistance to the Motion for Assignment of Judge and/or Consolidation of Cases on August 16, 2012.

The case Petitioner seeks to consolidate involves the Board of Regents, State of Iowa, and University of Northern Iowa (hereinafter "United Faculty") as Petitioners and PERB as Respondent, Case No. CV 009268 ("UNI case"). On July 19, 2012 United Faculty filed a Petition for Judicial Review seeking review of a Declaratory Order issued by PERB on May 30, 2012, regarding the bargaining rights of the Petitioner's and the authorized bargaining representative of faculty at the University of Northern Iowa. United Faculty seek review of PERB's ruling wherein the Early Separation Incentive Program is a mandatory topic of bargaining as "procedures for staff reduction" under Iowa Code section 20.9.

Iowa Rule of Civil Procedure 1.913 states

Unless a party shows the party will be prejudiced thereby the court may consolidate separate actions which involve common questions of law or fact or order a single trial of any or all issues therein. In such cases it may make such orders concerning the proceedings as tend to avoid unnecessary cost or delay.

The Court must first determine whether the cases involve common questions of law or fact; then the Court must determine "whether the benefits of consolidation are outweighed by the risk of prejudice and confusion." *Johnson v. Des Moines Metro. Wastewater Reclamation Auth.*, 814 N.W.2d 240, 247 (Iowa 2012). Rule 1.913 grants great discretion to the trial court to determine whether or not it is appropriate to consolidate. *See Kent Feeds, Inc. v. Manthei*, 646 N.W.2d 87, 90 (Iowa 2002) ("rulings on such requests [motions to consolidate] are discretionary

with the court, . . . as consolidation is merely a method of achieving judicial economy in the proper case.” (citations omitted)); *see also Schupbach v. Schuknecht*, 204 N.W.2d 918, 920 (Iowa 1973). The Iowa Supreme Court has recently interpreted Rule 1.913, citing with approval the Fourth Circuit’s interpretation of the analogous federal rule

The critical question for the district court in the final analysis was whether the specific risks of prejudice and possible confusion were overborne by the risk of inconsistent adjudications of common factual and legal issues, the burden on parties, witnesses and available judicial resources posed by multiple lawsuits, the length of time required to conclude multiple suits as against a single one, and the relative expense to all concerned of the single-trial, multiple-trial alternatives.

Johnson, 814 N.W.2d at 245–46 (quoting *Arnold v. E. Air Lines, Inc.*, 681 F.2d 186, 193 (4th Cir. 1982)). “These same considerations guide the district court’s decision under Iowa Rule of Civil Procedure 1.913.” *Id.* at 246.

Here, Petitioner asserts consolidation is appropriate because the determinations at issue for judicial review arise out of the same state agency. However, this alone is not enough for the Court to consolidate the actions. If this argument alone were sufficient to consolidate cases, every case against the state or a state agency could be said to be proper to consolidate with every other case against the state or state agency. Indeed, the only common party to either case is PERB, no other party or intervenor is similar.

Petitioner claims consolidation would prevent the possibility of inconsistent results between the cases. The Court does not find this argument persuasive. The substantive issues between this case and the UNI case are dissimilar; the cases do not involve common facts and do not require interpretation of the same provisions of Iowa Code Section 20.9. Even if the same substantive law were to apply to each case, “two factually unrelated . . . actions are not ripe for consolidation simply because the same substantive law applies to each.” *Johnson*, 814 N.W.2d at 247 (citation omitted). Here, there is no common question of fact. The only similarity

between the parties is the state agency PERB. The cases are not founded on a single happening, seek different grounds for relief, and come for judicial review following different types of underlying proceedings. The instant case involves a Ruling on Negotiability Dispute while the UNI case arises from a Declaratory Order. Legally, the cases are only broadly similar in that both involve mandatory negotiation topics under section 20.9. However, section 20.9 treats “procedures for staff reduction” and “supplemental pay” as distinct topic categories and the topics require different applications of law.

On balance, the similarities between the instant case and the UNI case are far outweighed by their dissimilarities. It is true both cases involve appeals from decisions of PERB. It is also true both cases involve mandatory topics of bargaining under Iowa Code Section 20.9. This is, however, the extent of the similarity. Here, appeal is taken from PERB’s interpretation of the statutory term “supplemental pay.” In the UNI case, appeal is taken from PERB’s interpretation of the statutory term “procedures for staff reduction.” These are independent mandatory topics of bargaining found within the express listing of several topics within Section 20.9. Issues relating to “supplemental pay” and those relating to “procedures for staff reduction” are independent and cannot be said to rise to the level of a common question of law. There is no commonality between petitioners and intervenors, the facts of each case are dissimilar, and the procedural devices involved are dissimilar. The differences between the instant case and the UNI case are sufficient to indicate consolidation would be improper. Because the cases involve no common questions of fact and different provisions of section 20.9, there is no reasonable concern deciding the cases as two separate matters will result in inconsistent decisions.

The Court finds consolidation will not significantly promote the goal of judicial economy and instead will lead to increased complexity and risk of error. Trying the cases jointly would

place a high burden on the parties because the evidence involved for each case would relate only to that case and may be inadmissible in relation to the other. The risk of confusion of evidence, then, would not be an effective utilization of judicial resources. The Court finds there is no common question of law or fact. Additionally, the risk of prejudice and confusion outweighs any possible benefit of consolidation.

Petitioner's request for assignment of the cases to the same judge is without basis. Local Rule 30(H) does not require the assignment of the cases to a single judge nor does it make provision for any such procedure. The mere commonality of a single statute and Respondent state agency does not warrant the assignment of independent cases to a single judge. The cases have already been assigned according to the Local Rules and the Court finds this assignment proper.

RULING

IT IS THEREFORE ORDERED Fort Dodge Community School District's Motion for Assignment of Judge and/or Consolidation of Cases is **DENIED**.

IT IS SO ORDERED this 20th day of Nov., 2012.

Mary Pat Gunderson
MARY PAT GUNDERSON,
 District Judge
 Fifth Judicial District of Iowa

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