

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

FILED  
2012 JAN 10 AM 7:33  
BY \_\_\_\_\_

CENTRAL TEXAS CHAPTER, NATIONAL  
ELECTRICAL CONTRACTORS  
ASSOCIATION, INC.,

Plaintiff,

-vs-

Case No. A-11-CA-339-SS

INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS LOCAL UNION NO.  
520,

Defendant.

---

**ORDER**

BE IT REMEMBERED on this day the Court reviewed the file in the above-styled cause, and specifically Plaintiff Central Texas Chapter, National Electrical Contractors Association, Inc. (the Chapter)'s Motion for Stay Pending Appeal [#56], Defendant International Brotherhood of Electrical Workers Local Union No. 520 (the Union)'s Response in Opposition [#57], and the Chapter's Reply [#58]. Having reviewed the aforementioned documents, the case file as a whole, and the relevant law, the Court enters the following opinion and orders.

**Analysis**

Whether to grant a stay pending appeal is a matter "left to the court's discretion." *Nken v. Holder*, 129 S. Ct. 1749, 1761 (2009). In deciding such a motion, a court considers four factors: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest

✓

lies.” *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987). However, the first two factors “are the most critical. *Nken*, 129 S. Ct. at 1761.

With respect to the first factor, the Chapter merely reiterates arguments the Court has already considered and rejected. It is understandable that the Chapter disagrees with the Court’s conclusions, but that is not enough. The Chapter has offered nothing new to convince the Court to change its mind, and certainly has not made the required “strong showing” that it is likely to succeed on the merits. *See id.* (“It is not enough that the chance of success on the merits be “better than negligible.””) (quoting *Sofinet v. INS*, 188 F.3d 703, 707 (7th Cir. 1999)). Indeed, the Court is of the opinion that the Chapter’s arguments regarding trust fund contributions, if adopted by a court, would constitute a set of sweeping changes to labor relations in many industries, changes the Fifth Circuit is unlikely to embark upon. The first factor therefore precludes issuance of a stay.

Turning to the second factor, the Court thinks the arbitration award, as modified by this Court’s order, is valid and enforceable. As such, the Court thinks it very unlikely the Chapter will be irreparably injured absent a stay. *See id.* (“By the same token, simply showing some possibility of irreparable injury, fails to satisfy the second factor.”) (quotation and citation omitted). Also, as the Court explained in its order, the core challenge advanced by the Chapter was its belief the benefit trustees will unilaterally raise the contribution rates, which, based on decades of experience, they are very unlikely to do. To the extent the Chapter would suffer irreparable harm in terms of overpayment of compensation or benefits, the Court is unpersuaded by this argument as well. First, the Court is confident the Chapter will have no trouble recovering any overpayment from the benefit funds. They are all apparently long-established, law-abiding entities. Regarding the wages, although the Chapter may have a good point when it alleges it might have trouble obtaining reimbursement

from “transitory” workers, the wages are undisputedly mandatory subjects of bargaining, over which the arbitrator had unquestioned authority to grant an award. Therefore, any payment of the wages established in the award cannot constitute “harm.” The Court thus concludes the second factor does not weigh in favor of a stay.

By contrast, the Union will likely suffer irreparable injury under a stay. Like this Court, the Fifth Circuit has an overburdened caseload, with appeals often taking a year or more to resolve. There is a real danger the current collective bargaining agreement, instituted by the arbitration award, will have expired by the time the Fifth Circuit is able to rule, thus leaving the parties in an area of great uncertainty when the time comes to negotiate a new employment agreement. Moreover, it is precisely because so many Union employees are transitory that their wages must be protected and paid, or else they may never receive the full compensation they are due. Accordingly, the third factor militates against issuance of a stay.

Finally, the fourth factor likewise does not support issuance of a stay. There is a very strong public policy in favor of arbitration generally, and in the context of labor relations it is of particular significance. *See United Steelworkers of Am. v. Warrior & Gulf Co.*, 363 U.S. 574, 577–78 (1960). The Union points out, correctly this Court believes, that allowing the Chapter to evade its contractual obligations any longer would undermine the public interest in arbitration as an expedient and inexpensive means of resolving disputes. *See AT&T Mobility v. Concepcion*, 131 S. Ct. 1740, 1749 (2011).

### **Conclusion**

The Court is of the opinion virtually all of the Chapter’s arguments were deficient in merit, and the Chapter thus should no longer be able to escape the mandates of public policy, nor the terms

of the bargain it agreed to. Because the Chapter has failed to demonstrate that a stay is appropriate in this case, the Court denies its motion.

Accordingly,

IT IS ORDERED that the Chapter's Motion for Stay Pending Appeal [#56] is DENIED.

SIGNED this the 9<sup>th</sup> day of January 2012.

  
\_\_\_\_\_  
SAM SPARKS  
UNITED STATES DISTRICT JUDGE