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4 UNITED STATES BANKRUPTCY COURT
5 EASTERN DISTRICT OF CALIFORNIA
6 SACRAMENTO DIVISION
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10 In re)
11) Case No. 08-26813-A-9
12 CITY OF VALLEJO,)
13) Docket Control No. FBM-2
14 Debtor.)
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15 **MEMORANDUM**

16 The International Association of Firefighters Local 1186
17 (IAFF) seeks a declaration that the automatic stay does not
18 prevent it from pursuing a safety grievance against the City of
19 Vallejo for its unilateral reduction in staffing levels,
20 allegedly in violation of a collective bargaining agreement (CBA)
21 as interpreted by a Memorandum of Understanding as well as prior
22 arbitration awards.

23 If the automatic stay is applicable, the IAFF seeks relief
24 from it in order to pursue its grievance. It maintains there is
25 cause to modify the automatic stay because: (1) noncore claims
26 must be arbitrated when a contract requires arbitration; (2) the
27 grievance was previously arbitrated and the resulting award in
28 favor of the IAFF will have a preclusive effect; (3) the City may

1 not make unilateral changes to the CBA prior to a court-approved
2 rejection of it; and (4) even if the City is allowed to reject
3 the CBA, this motion is not moot because the City must still
4 abide by the terms of the CBA until a new collective bargaining
5 agreement is put in place.

6 The motion will be denied without prejudice.

7 In part, the IAFF is seeking declaratory relief. It wants
8 this court to declare that the automatic stay is not applicable
9 to the prosecution of its grievance in a nonbankruptcy forum.
10 While declaratory relief arguably requires an adversary
11 proceeding (see Fed. R. Bankr. P. 7001(7), (9)), the IAFF also
12 argues that if the automatic stay is applicable there is cause to
13 modify it. Relief from the automatic stay does not require an
14 adversary proceeding. When presented with a motion for such
15 relief, the court must conclude first that the automatic stay is
16 applicable and then determine whether there is cause to modify
17 it.

18 The automatic stay protects a debtor from the prosecution of
19 any action based on a breach of a pre-petition contract, such as
20 the CBA. Section 362(a)(3) protects a debtor from "any act . . .
21 to exercise control over property of the estate." See 11 U.S.C.
22 § 362(a)(3). The object of the grievance proceeding would be to
23 compel the City to comply with safety and workload truck staffing
24 standards. This conceivably would force the City to expend money
25 to place more firefighters on duty and therefore has the
26 potential to exert control over property of the estate.

27 The IAFF argues that a 2007 arbitration between the parties,
28 determining that the City cannot staff fire trucks with only

1 three firefighters, will have a preclusive effect in any new
2 grievance. If this is correct, a new grievance is unnecessary.
3 The only conceivable reason to go forward with one would be to
4 force the City to place more firefighters on duty and comply with
5 the 2007 arbitration award. This would be "exerc[ising] control
6 over property of the estate."

7 The IAFF argues that the automatic stay does not apply to
8 post-petition breaches of an agreement. It cites three cases in
9 support of this, In re Miller, 262 B.R. 499 (B.A.P. 9th Cir.
10 2001), Bellini Imports, Ltd. v. The Mason and Dixon Lines, Inc.,
11 944 F.2d 199 (4th Cir. 1991), and Fed. Aviation Admin. v. Gull
12 Air, Inc. (In re Gull Air, Inc.), 890 F.2d 1255 (1st Cir. 1989).
13 However, none of the cases are dispositive.

14 In Miller, the court held that the automatic stay does not
15 apply to discovery pertaining to the claims of non-debtor parties
16 and that such discovery is not an action or proceeding against
17 the debtor for purposes of section 362(a). Miller, 262 B.R. at
18 505-06. The creditor propounding the discovery in that case had
19 issued third-party witness subpoenas to the debtor, tailored to
20 apply only to the creditor's claims against the debtor's non-
21 filing spouse. When the debtor did not comply with the
22 subpoenas, the creditor moved to compel compliance and sought
23 sanctions for the debtor's noncompliance. In turn, the debtor
24 moved for contempt. Miller, 262 B.R. at 501-02.

25 This case, though, does not involve discovery and does not
26 involve discovery pertaining to claims against non-debtor
27 parties. It involves the prosecution of a grievance and/or the
28 enforcement of a prior arbitration award against the debtor.

1 In Bellini, the creditor prosecuted a post-petition action
2 and obtained a default judgment against the debtor for a post-
3 petition breach of a hauling contract. The creditor then
4 attempted to satisfy the judgment from property of the estate.
5 Although Bellini held that the automatic stay does not bar an
6 action arising out of an alleged post-petition breach of contract
7 by the debtor, the court did not allow the creditor to enforce
8 its judgment against the estate and its property. Bellini, 944
9 F.2d at 201-02.

10 In other words, while the action against the debtor to
11 liquidate the claim was not subject to the automatic stay, the
12 stay still precluded the enforcement of the resulting judgment
13 against the bankruptcy estate.

14 Here, as mentioned above, given the prior ruling in favor of
15 the IAFF, and given its position that this ruling precludes
16 relitigation of the grievance issue, the only thing to be
17 accomplished by granting the motion would to be force the City to
18 comply with the prior arbitration award. Under Bellini, this is
19 subject to the automatic stay. Bellini, 944 F.2d at 201-02.

20 Neither does Gull suggest that the IAFF should prevail. In
21 Gull, the court ruled that section 362(a)(1) and (a)(3) did not
22 apply to the Federal Aviation Administration's post-petition
23 withdrawal of arrival/departure slots because the withdrawal did
24 not qualify as an action or proceeding against the debtor. The
25 slots automatically expired according to the regulations under
26 which the debtor held them. The slots expired due to the
27 debtor's failure to use them. This expiration did not require
28 any affirmative act by the FAA. Gull, 890 F.2d at 1261-62, 1263-

1 64.

2 In contrast to Gull, the IAFF must initiate an action in
3 order to force the City to staff fire trucks with four rather
4 than three firefighters. The IAFF would have to initiate the
5 procedures outlined in the CBA, which would necessarily include
6 filing an action to enforce the 2007 arbitration award.

7 The CBA is a pre-petition contract. Any claim based on that
8 contract, including one created by a post-petition breach, is a
9 claim arising prior to the filing of the chapter 9 petition. A
10 claim arises when the obligation is incurred, not when the
11 obligation falls due, whether it is due because it has matured or
12 because the debtor has committed a breach. Hence, a pre-petition
13 contract that has not been breached when the bankruptcy petition
14 is filed nonetheless constitutes a pre-petition unliquidated or
15 contingent claim against the debtor. See 11 U.S.C. § 101(5) (a
16 claim includes any right to payment including those that are
17 unliquidated or contingent). Cf. Grady v. A.H. Robins Co., Inc.,
18 839 F.2d 198 (4th Cir. 1988) (concluding that a claim based on
19 the pre-petition use of a birth control device arose before the
20 manufacturer's bankruptcy even though no injury had manifested
21 itself prior to bankruptcy).

22 The IAFF also argues that the City's unilateral abrogation
23 of the CBA is not protected by the automatic stay because the
24 court in County of Orange held that the County's unilateral
25 abrogation of seniority and grievance procedures was improper.
26 Orange County Employees Ass'n v. County of Orange (In re County
27 of Orange), 179 B.R. 177, 184 (1995). But, the County of Orange
28 court did not address whether the automatic stay is applicable.

1 In County of Orange, the debtor unilaterally abrogated
2 seniority and grievance procedures without first requesting
3 rejection of the underlying collective bargaining agreements.
4 Here, on the other hand, the City filed a motion to reject the
5 pre-petition CBA on June 17, 2008, 13 days before it unilaterally
6 reduced staffing levels from 28 to 22 firefighters per shift.
7 Also, the City did not reduce staffing levels on fire truck
8 companies from four to three until December 2, 2008. See Motion
9 For Relief From Stay at 7. In other words, the City did not
10 merely alter the terms of the CBA. It did so only after it had
11 moved for its rejection.

12 Whether there is cause for relief from the automatic stay
13 under section 362(d)(1) is largely dependent on the context of
14 each case. MacDonald v. MacDonald (In re MacDonald), 755 F.2d
15 715, 717 (9th Cir. 1985). Several factors often are considered
16 by courts, including: 1) whether granting relief will interfere
17 with the bankruptcy case; 2) whether the pending litigation
18 involves only state law; 3) the complexity of the issues; 4)
19 judicial economy and efficiency; and 5) prejudice to the parties.
20 MacDonald, 755 F.2d at 717; Robbins v. Robbins (In re Robbins),
21 964 F.2d 342, 345 (4th Cir. 1992) (citing MacDonald, 755 F.2d at
22 717); Universal Life Church, Inc. v. Untied States (In re
23 Universal Life Church, Inc.), 127 B.R. 453, 455 (E.D. Cal. 1991);
24 GSB I, LLC v. A Partners, LLC (In re A Partners, LLC), 344 B.R.
25 114, 127 (Bankr. E.D. Cal. 2006).

26 Modifying the automatic stay for the IAFF to prosecute a
27 grievance to force the City to comply with safety and workload
28 truck staffing standards under the CBA makes little sense at this

1 point in time because this court is about to rule on whether the
2 debtor may reject the CBA. The court recognizes that if it does
3 not permit the debtor to reject the pre-petition CBA, the IAFF
4 conceivably might utilize section 7.A. of the MOU to compel the
5 City to arbitrate safety and workload staffing disagreements.
6 And, if the court permits the City to reject the CBA, the parties
7 would have to negotiate a new collective bargaining agreement.
8 During such negotiations, the parties may agree on a process to
9 resolve safety and workload staffing disputes with or without
10 resort to the procedures prescribed by the CBA or applicable law.
11 See Firefighters Local 1186 v. City of Vallejo, 12 Cal. 3d 608,
12 621-22 (1975) (interpreting the City of Vallejo's charter to
13 require arbitration, absent an agreement, on any decision to
14 reduce the number of firefighters to the extent it affects the
15 working conditions and safety of the remaining firefighters).

16 Therefore, until it is determined whether the City may
17 reject the CBA, the IAFF may not initiate an arbitration
18 proceeding pursuant to the terms of the CBA to resolve safety and
19 workload staffing disagreements. The CBA may become obsolete if
20 and when the City is allowed to reject it.

21 Further, modifying the automatic stay at this time would
22 interfere with the prosecution of the bankruptcy case by all
23 parties because they are in the midst of litigating the City's
24 attempt to reject the CBA. If it is rejected, the parties will
25 have to negotiate a new CBA. Moreover, regardless of whether the
26 City is allowed to reject the CBA, the parties should continue to
27 negotiate its modification.

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1 The IAFF's argument that it must be allowed to exercise a
2 contractual right to arbitrate a noncore claim may be correct if
3 the court does not permit the rejection of the CBA. But, because
4 the court has not yet decided whether the CBA may be rejected,
5 this argument is premature.

6 The IAFF's argument that the City may not unilaterally alter
7 the terms of the CBA and must abide to the terms of the CBA, both
8 pending its rejection and after rejection until a new agreement
9 is reached, lacks merit. In the event this court concludes that
10 Bildisco fully applies in this case, the CBA would not be
11 enforceable unless and until the City accepts it. Bildisco held
12 that "from the filing of a petition in bankruptcy until formal
13 acceptance, the collective-bargaining agreement is not an
14 enforceable contract." See N.L.R.B. v. Bildisco & Bildisco, 465
15 U.S. 513, 531 (1984). This would mean that the City would not
16 have to abide to the terms of the CBA, pending its rejection or
17 after its rejection.

18 The court concludes that no cause exists for the lifting of
19 the stay at this time. Accordingly, the motion will be denied
20 without prejudice. A separate order will be entered.

21 Dated:

22 By the Court

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24 _____
25 Michael S. McManus
26 United States Bankruptcy Judge
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