IN THE SUPREME COURT OF IOWA
Supreme Court No. 17-2093

UE LOCAL 893/IUP,

Plaintiff-Appellee,

vs.

STATE OF IOWA,

Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
THE HONORABLE MICHAEL D. HUPPERT, JUDGE

APPELLANT'S BRIEF

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ROUTING STATEMENT

This case should be retained by the Supreme Court because it presents substantial issues of first impression and presents fundamental issues of broad public importance requiring prompt or ultimate determination by the Supreme Court. *See* Iowa R. App. P. 6.1101(2).

STATEMENT OF THE CASE

On February 21, 2017, UE Local 893/IUP (hereinafter "UE") filed a petition in Polk County district court seeking to enforce the terms of the alleged collective bargaining agreement. *See* Petition p.1-5 (App. at 5-9). The State of Iowa (hereinafter "the State") filed a pre-answer motion to dismiss, arguing the district court lacked subject matter jurisdiction because (1) the State did not ratify UE's proposed collective bargaining agreement to complete the final prerequisite to form a binding collective bargaining agreement under Iowa Administrative Rule 621—6.4(3); and (2) UE did not exhaust its administrative remedies because the prohibited practices complaint ("PPC") filed with the Iowa Public Employment Relations Board ("PERB") to order the State to ratify UE's proposed agreement to form a binding collective bargaining agreement was not exhausted;

and in the alternative, (3) that the district court should defer to PERB under primary jurisdiction. Motion to Dismiss p.1-3 (App. at 40-42); Def.'s Br. in Support of Motion to Dismiss p.3-13 (App. at 45-55). The district court denied the State's motion to dismiss. Ruling on Def.'s Motion to Dismiss p. 1-4 (App. at 60-63). Thereafter, under stipulated set of facts, the State filed a motion for summary judgment and UE filed its own cross-motion for summary judgment. In its motion for summary judgment, the State argued (1) primary jurisdiction applied, (2) traditional common-law principles of contract should apply in the collective bargaining context to hold that there was no formation of contract, and (3) even if the *Pepsi-Cola* standard is applied, under the facts of this case, there was no formation of contract. Motion for Summ. J. p. 1-3 (App. at 69-71); Def.'s Memo. of Authorities in Support of Summ. J., or in the alternative, Motion to Stay p. 1-20 (App. at 72-91).

STATEMENT OF FACTS

The facts, for the most part, are not contested. The applicable stipulated facts are as follows:

- UE and the State were parties to collective bargaining agreements which were effective July 1, 2015 through June 30, 2017. Stipulation of Facts ¶ 7 (App. at 66).
- In preparation for the negotiations for the successor collective bargaining agreement, in May 2016, UE and the State agreed to a 2017-2019 Negotiation Calendar. Stipulation of Facts ¶ 8 (App. at 66).
- UE made an initial bargaining position for a successor collective bargaining agreement to the State of Iowa pursuant to Iowa Code Section 20.17(3) on December 6, 2016. Stipulation of Facts ¶ 9 (App. at 66).
- The State made its initial bargaining position to UE pursuant to Iowa Code Section 20.17(3) on December 20, 2016. Stipulation of Facts ¶ 10 (App. at 66).
- On January 10, 2017 UE and the State met for a negotiation session. Stipulation of Facts ¶ 11 (App. at 66).
- The January 10, 2017 bargaining session began with UE asking questions about the State's initial bargaining position. The State did not deviate from its initial bargaining position as it was waiting to see whether the Iowa Legislature

intended to amend chapter 20 and UE did not deviate from its initial bargaining position as it required more details regarding the State's insurance proposal. Stipulation of Facts ¶ 12 (App. at 66).

- UE and the State agreed to cancel bargaining sessions previously scheduled for January 11, 18, and 19. Stipulation of Facts ¶ 13 (App. at 67).
- At no time prior to and during the January 10, 2017 bargaining session did UE accept the State's initial bargaining position. Stipulation of Facts ¶ 14 (App. at 67).
- The State at no time prior to February 10, 2017 withdrew its initial bargaining position. Stipulation of Facts ¶ 15 (App. at 67).
- On February 10, 2017, UE informed the State that their Negotiation Committee had unanimously voted to accept the State's December 20, 2016 initial proposal. Stipulation of Facts ¶ 16 (App. at 67).
- On February 14, 2017, UE's members voted unanimously to ratify the State's December 20, 2016 initial proposal. Stipulation of Facts ¶ 17 (App. at 67).

- At no time prior to ratification by UE on February 14, 2017 of the State's December 20, 2016 initial proposal did the State withdraw its December 20, 2016 initial proposal. Stipulation of Facts ¶ 18 (App. at 67).

ARGUMENT

I. The District Court Did Not Have Subject Matter Jurisdiction

The district court did not have subject matter jurisdiction in this case. Iowa Code chapter 20 is the comprehensive statute that regulates public employer bargaining. UE filed a petition under Iowa Code section 20.17(5) to enforce the terms of the alleged collective bargaining agreement. *See* Petition p. 4, ¶ 25 (App. at 8). However, section 20.17(5), the basis of the district court's jurisdiction is limited to enforcement of the terms of a collective bargaining agreement. The statutory provision provides, "*terms* of any collective bargaining agreement may be enforced by a civil action in the district court of the county in which the agreement was made upon the initiative of either party." Iowa Code § 20.17(5) (emphasis added). That is, when there is a collective bargaining agreement and a dispute arises as to a *term* within the agreement, a civil action may be filed in district court to enforce the term.

The plain language of the statute, however, makes clear that Iowa Code section 20.17(5) does not extend jurisdiction to the district court to determine whether a collective bargaining agreement exists in the first instance. *See generally Norton v. Adair County*, 441 N.W.2d 347, 354 (Iowa 1989) (stating section 20.17(5) is an enforcement provision of the terms of the collective bargaining agreement). Rather, Iowa Code chapter 20 provides PERB with rulemaking authority to determine whether a collective bargaining agreement exists. *See* Iowa Code § 20.6(5). The Iowa Administrative Code sections 6.4(2) and 6.4(3) specifies the process for an employee organization to ratify or reject a tentative agreement and the process for a public employer to accept or reject it. 621 IAC 6.4(2) & (3). Here, it is undisputed that after UE ratified the State's December 20, 2016 initial proposal, the State did not accept the agreement under Iowa Administrative Code section 6.4(3). Accordingly, there was no ratified and valid collective bargaining agreement. *See* 621 IAC 6.4(3). Thus, the district court did not have subject matter jurisdiction to enforce any term of a collective bargaining agreement under Iowa Code section 20.17(5) because there were no terms of a ratified collective bargaining agreement for the district court to

enforce. Accordingly, this Court should dismiss the case for lack of subject matter jurisdiction.

II. UE Failed to Exhaust Administrative Remedies

The standard of review for ruling on motions to dismiss is for correction of legal errors. *Ritz v. Wappello County Bd. of Supervisors*, 595 N.W.2d 786, 789 (Iowa 1999). The State preserved error. *See* Def.'s Motion to Dismiss p.1-3 (App. at 40-42); Def.'s Br. in Support of Motion to Dismiss p. 1-2, 7-9 (App. at 43-44, 49-51). Here, the district court erred by not dismissing the case on failure to exhaust administrative remedies.

The district court erred when it denied the State's motion to dismiss on the basis of UE's failure to exhaust administrative remedies. In Iowa, "[i]t is well established that a party must exhaust any available administrative remedy before seeking relief in the courts [and a] plaintiff's failure to exhaust an administrative remedy deprives the district court of jurisdiction of the case." *Shors v. Johnson*, 581 N.W.2d 648, 650 (Iowa 1998) (citation omitted). The Iowa Supreme Court explained that "[t]he exhaustion of remedies requirement is a highly utilitarian principle of administrative law both as an expression of administrative autonomy and a rule of sound

judicial administration." *Pro Farmer Grain v. Iowa Dep't of Ag.*, 427 N.W.2d 466, 469 (Iowa 1988). If the "agency has been legislatively created as an entity vested with its own powers and duties . . . [i]t should be free to work out its own problems, and the courts should not interfere with its work until the agency has completed its task." *Id.*

Here, the legislature delegated to PERB the authority to determine whether a public employer or employee organization committed a prohibited practice. Iowa Code § 20.11(1) (providing that proceedings alleging a prohibited practice "*shall* be commenced by filing a complaint" with PERB) (emphasis added); *see also Maquoketa Valley Community Sch. Dist. v. Maquoketa Valley Ed. Ass'n.*, 279 N.W.2d 510, 512 (Iowa 1979) (PERB was legislatively delegated the role of supervising bargaining); *Sioux City Police Officer's Ass'n v. City of Sioux City*, 495 N.W.2d 687, 692 (Iowa 1993) (observing PERB "generally has exclusive jurisdiction to determine negotiability issues under Iowa Code chapter 20" and that "[i]t is appropriate for an agency in the first instance to interpret the statute it administers"); *Harrison v. State*, No. 08-0384, 2008 WL 5412265, at *2 (Iowa Ct. App. Dec. 31, 2008) ("[T]he legislature created [PERB]

'to implement the provisions of [chapter 20] and adjudicate and conciliate employment-related cases involving the state of Iowa and other public employers and employee organizations.'" (quoting Iowa Code § 20.1)). The legislature defined "prohibited practice" to include failures on the part of a public employer or employee organization to collectively bargain and to engage in the impasse procedures. Iowa Code § 20.10. Therefore, PERB possesses the authority and statutory duty to determine whether the parties bargained to the completion of a fully-ratified agreement under the administrative rules. *See* 621 IAC 6.4(2) & (3) (stating the process for an employee organization and a public employer to accept or reject a tentative agreement). UE's contention that the agreement was binding on the parties despite a lack of final acceptance by the public employer directly implicates the application and interpretation of PERB's administrative rules.

It is undisputed that UE filed a PPC against the State seeking PERB to order the State, in part, to "ratify [the] proposal as accepted by UE Local 893/IUP." Def.'s Motion to Dismiss Ex. 1 (App. at 57). UE's PPC, which was filed prior to this instant lawsuit, has not been resolved. After the PPC's resolution by PERB, UE will have judicial

recourse from PERB's final action. *See* Iowa Code § 20.11(5) (providing review of PERB's final decision is governed by chapter 17A). Because an adequate administrative remedy exists and because the governing statute requires exhaustion before permitting judicial review, UE had to first exhaust its administrative remedies. *Regional Retirement Living, Inc. v. Board of Review of Wapello County*, 611 N.W.2d 779, 781 (Iowa 2000).

The requirement for UE to first exhaust its administrative remedies is especially heighted in this instance as it provides PERB the initial opportunity to construe and interpret its own rules on a fundamental issue as contract formation. *See, e.g.*, *Des Moines Area Regional Transit Authority v. Young*, 867 N.W.2d 839, 842 (Iowa 2015) (stating "[w]e give an agency substantial deference when it interprets its own regulations"). Here, given that UE did not exhaust its administrative remedies, the district court had no jurisdiction to hear the case. "When a party fails to exhaust all of its required administrative remedies, the court has no authority to hear the case, and if a party properly raises the challenge, the court *must* dismiss the case." *Ghost Player, L.L.C. v. State*, 860 N.W.2d 323, 326 (Iowa 2015) (citing *Keokuk County v. H.B.*, 593 N.W.2d 118, 123 (Iowa

1999)) (emphasis added). Accordingly, the district court erred when it failed to dismiss the action for UE's failure to exhaustion administrative remedies.

III. In the Alternative, the District Court erred in not Deferring the case under Primary Jurisdiction

The standard of review for ruling on motions to dismiss and motions for summary judgment is for correction of legal errors. *Ritz*, 595 N.W.2d at 789; *Freeman v. Grain Processing Corp.*, 848 N.W.2d 58, 65 (Iowa 2014). The State preserved error. *See* Motion to Dismiss p.1-3 (App. at 40-42); Def.'s Br. in Support of Motion to Dismiss p.1-2, 9-13 (App. at 43-44, 51-55); Motion for Summ. J. p. 1-2 (App. at 69-70); Def.'s Memo. of Authorities in Support of Summ. J., or in the alternative, Motion to Stay p. 1-2, 5-10 (App. at 72-73, 76-81). Here, the district court erred by not deferring the case under primary jurisdiction.

If the Court finds the district court had jurisdiction, the district court erred when it did not defer the case to PERB under the doctrine of primary jurisdiction. Under the doctrine of primary jurisdiction, a court may decline to determine a controversy that involves a question that is within the jurisdiction of an administrative tribunal or agency. *State ex rel. Miller v. DeCoster*, 608 N.W.2d 785, 791 (Iowa 2000)

(citations omitted). The doctrine of primary jurisdiction applies where a claim can originally be addressed in a court but would be better addressed first by an administrative body. That is, "[w]hen the legislature has not delegated jurisdiction of the controversy to an agency but the controversy . . . implicates issues requiring the exercise of administrative discretion, the doctrine of primary jurisdiction is applicable." *Rowen v. LeMars Mut. Ins. Co. of Iowa*, 230 N.W.2d 905, 909 (Iowa 1975). It applies to claims that contain some issue within the special competence of an administrative agency. Thus, under the primary jurisdiction doctrine, courts will defer ruling on a controversy involving a question within the jurisdiction of an administrative tribunal until after that tribunal has rendered its decision. *See City of Waukee v. City Dev. Bd.*, 514 N.W.2d 83, 90 (Iowa 1994) (refraining from resolving dispute under the doctrine of primary jurisdiction because the issues fell within the jurisdiction of an agency); 2 Am. Jur. 2d Administrative Law, at § 480.

Here, PERB, as the tribunal with initial authority under section 20.10, should determine what principles should govern offer and acceptance in collective bargaining given its subject-matter expertise and the need for uniformity which will govern all public employers

bargaining in Iowa. *See Moravia Cmty Sch. Dist. v. Moravia Educ. Ass'n*, 460 N.W.2d 172, 177 (Iowa Ct. App. 1990) (stating PERB has authority over supervision of bargaining). In fact, as noted above, UE affirmatively invoked PERB's authority over the parties' bargaining by filing a PPC with PERB claiming the State committed a prohibited practice in violation of section 20.10(2)(e) by refusing to negotiate collectively with UE. Motion to Dismiss Ex. 1 (App. at 57). The issues implicated in this case overlap with the very issues contained in both UE's and the State's pending PPCs on file with PERB, the administrative tribunal with primary jurisdiction over the PPCs. *See* Iowa Code § 20.1(2)(b) (providing PERB possesses the statutory obligation to "[a]djudicat[e] prohibited practice complaints"); Iowa Code § 20.11(1) (providing prohibited practice complaints must be commenced through a PERB filing); *see also Kaiser Steel Corp. v. Mullins*, 455 U.S. 72, 83 (1982) (holding that the NLRB "is vested with primary jurisdiction to determine what is or is not an unfair labor practice"); Francis M. Dougherty, et al., 22 Federal Procedure Lawyers Edition, at § 52:363 (2012) (stating "[b]ecause the [NLRB] is the sole protector of the national interest in the field of labor-management relations, any action which clearly or arguably involve

the rights of employees to organize or unfair labor practices are exclusively within the NLRB's competence, and federal courts must defer to the jurisdiction the NLRB exercises"). As noted above, there is no dispute that UE filed a PPC against the State with PERB, raising the same facts and arguments as contained within its Petition. *Compare* Motion to Dismiss Ex. 1 (App. at 57) *with* Petition p. 2-5 (App. at 6-9).

In this case, permitting PERB the first opportunity to adjudicate the matter serves significant policy interests. First, primary jurisdiction promotes proper relationships between the courts and administrative agencies charged with particular regulatory duties. Second, it allows uniform interpretation of chapter 20. *See, e.g.*, *Marquez v. Screen Actors Guild, Inc.*, 525 U.S. 33, 49 (1998) (stating that NLRB's primary jurisdiction over claims promotes "the uniform interpretation of the NLRA"). Third, PERB should be permitted the opportunity to construct and interpret its own administrative rules in the first instance. *See, e.g.*, *Des Moines Area Regional Transit Authority*, 867 N.W.2d at 842 ("[w]e give an agency substantial deference when it interprets its own regulations"). Indeed, doing so will avoid potentially inconsistent determination in this instance.

Lastly, in the event PERB finds merit in UE's position in the PPCs and orders the relief requested, this action would be rendered moot. *See Maghee v. State*, 773 N.W.2d 228, 233 (Iowa 2009) (holding a "case is moot when the contested issue has become academic or nonexistent"). Therefore, the district court erred when it did not defer resolution of this case until PERB adjudicated the PPCs under primary jurisdiction.[1]

IV. The District Court Applied an Improper Legal Standard to Determine Contract Formation

The standard of review for rulings on motions for summary judgment is for correction of legal errors. *Freeman*, 848 N.W.2d at 65. The State preserved error. Motion for Summ. J. p. 1-2 (App. at 69-70); Def.'s Memo. of Authorities in Support of Summ. J., or in the alternative, Motion to Stay p. 1-2, 10-20 (App. at 73-74, 81-91). Here,

[1] The courts that have addressed the primary legal question presented in this case have done so as an *appeal* from agency action. *See generally Pepsi-Cola Bottling Co. of Mason City, Iowa v. NLRB*, 659 F.2d 87 (8th Cir. 1981); *Capitol-Husting Co., Inc. v. NLRB*, 671 F.2d 237 (7th Cir. 1982); *NLRB v. Boston Dist. Council of Carpenters*, 80 F.3d 662 (1st Cir. 1996); *Ivaldi v. NLRB*, 48 F.3d 444 (9th Cir. 1995); *Williamhouse Regency of Delaware v. NLRB*, 915 F.2d 631 (11th Cir. 1990); *Teamsters Local Union No. 688 v. NLRB*, 756 F.2d 659 (8th Cir. 1985).

the district court erred by applying an improper legal standard for contract formation.

In its ruling on the State's motion for summary judgment, the district court applied the contract formation standard articulated in *Pepsi-Cola Bottling Company of Mason City, Iowa v. NLRB*, 659 F.2d 87 (8th Cir. 1981) and held that the State's initial bargaining position was not withdrawn prior to UE's acceptance or the membership's ratification. Ruling on Motions for Summ. J. at 5-6 (App. at 115-116). In *Pepsi-Cola*, the Eighth Circuit stated that in analyzing the formation of a collective barraging agreement, an offer will be considered remaining "on the table unless explicitly withdrawn by the offeror or unless circumstances arise which would lead the parties to reasonably believe that the offer had been withdrawn." 659 F.2d 87, 89 (8th Cir. 1981). However, the Iowa Supreme Court has not adopted this legal standard for public sector collective bargaining agreement formation under chapter 20. Indeed, although the Iowa Supreme Court has recognized that "ordinary contract principles do not necessary apply to [collective bargaining agreements]," the Iowa Supreme Court has not precluded the application of common law contract principles to collective

bargaining agreements. *Local Lodge No. 1426 v. Wilson Trailer Co. of Sioux City*, 289 N.W.2d 608, 610 (Iowa 1980).

In *Blackford v. Prairie Meadows Racetrack and Casino, Incorporated*, the Iowa Supreme Court in a case of first impression regarding the "nature of the contract between a patron and a gambling establishment" held that traditional common law principles of contract applied. 778 N.W.2d 184 (Iowa 2010). The *Blackford* Court first observed the two standards on the issue—traditional contract principles and the view that the contract is "completely determined by legislative enactment." *Id.* at 189. The *Blackford* Court explained that "the traditional contract approach is more consistent with [Iowa's] statutory scheme and precedent." *Id.* The Iowa Supreme Court further stated that "[w]hen a contract addresses an area of law regulated by a statute, the statutory provisions and restrictions are a part of the parties' contract" but if the statutory provisions do not address the issue, then the court "must [ ] employ traditional contract principles" to determine whether a contract has been formed. *Id.* Here, Iowa's collective bargaining is purely a statutory matter and Iowa Code chapter 20 does not specify the standard for evaluating collective bargaining offer and acceptance,

therefore, the district court erred in not applying the traditional contract principles.

There are, moreover, policy considerations that support the application of common law contract principles of offer and acceptance in the context of collective bargaining. The contract principles in Iowa are well established, which in turn promotes reliability, uniform treatment, stability, and predictability. Indeed, the application of the traditional contract principles in the collective bargaining context would save public employers, employee organizations, attorneys and even the courts from having to reanalyze issues from the ground whenever an issue arises. These traditional contract principles further have the benefit of *stare decisis* – "a foundation stone of the rule of law" which in and of itself, "promotes the evenhanded, predictable, and consistent development of legal principles . . . ." *State v. Short*, 851 N.W.2d 474, 515 (Iowa 2014) (Waterman, J., dissenting).

In applying the common law contract principles to the facts of this case, there was no offer for UE to accept. "All contracts must contain mutual assent" and the method of such assent is through offer and acceptance. *Heartland Express, Inc. v. Terry*, 631 N.W.2d

260, 268 (Iowa 2001). "An offer is a manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it." *Id.* (internal alterations and citations omitted); *see also* Restatement (Second) of Contracts § 50 (stating "[a]cceptance of an offer is a manifestation of assent to the terms thereof made by the offeree in a manner invited or required by the offer"). The determination of whether an offer exists is made objectively, not subjectively. *Heartland Express*, 631 N.W.2d at 268. Iowa law has long recognized that a response to an offer which varies in terms from those originally proposed amounts to a rejection of the initial offer. *Baker v. Johnson County*, 37 Iowa 186, 189 (1873). That is, "at common law 'an offer [has] to be accepted exactly "as is" or the response amount[s] only to a counter-offer.'" *Flanagan v. Consolidated Nutrition, L.C.*, 627 N.W.2d 573, 578 (Iowa Ct. App. 2001) (quoting *Tralon Corp. v. Cederapids, Inc.*, 966 F. Supp. 812, 823 (N.D. Iowa 1997)); *see also* Restatement (Second) of Contracts § 59 (providing a reply to an offer which varies in terms to those offered is not an acceptance, but instead, is a counteroffer); 1 Williston on Contracts § 5:3 (4th ed.) ("As a general principle, any words or acts of

the offeree indicating that the offer has been declined, or otherwise justifying the offeror in inferring that the offeree intends not to accept the offer or give it further consideration, amount to a rejection.").

Here, the parties' contract negotiations began with UE making an initial proposal to the State on December 6, 2016. *See* Stipulation of Facts ¶ 9 (App. at 66). The State responded by submitting its initial proposal on December 20, 2016. *See* Stipulation of Facts ¶ 10 (App. at 66). The two respective proposals were substantially different, for example, in the Wages and Fringe Benefits section, UE proposed a 4% across the board salary increase while the State's response proposed a 0% across the board increase. *Compare* Petition Attachment C (App. at 10) *with* Petition Attachment D (App. at 23). Thus, the State's December 20, 2016 proposal was not an "as-is" acceptance of UE's December 6, 2016 proposal, but rather, a rejection of UE's initial proposal and constituted the State's counterproposal. *See Flanagan*, 627 N.W.2d at 578 (stating that an offer has to be accepted exactly "as is" or it is a counter-offer); *Baker*, 37 Iowa at 189 (stating that response to an offer which varies in terms from those originally proposed amounts to a rejection of the initial offer). Therefore, at the point of the parties' January 10, 2017 bargaining

session, only the State's December 20, 2016 proposal was on the table.

During the bargaining session, UE did not accept the State's proposal and, instead, reaffirmed its initial proposal as it was unable to deviate from its initial bargaining position until it received more details regarding benefits. Stipulation of Facts ¶ 12 (App. at 66). Because UE's response to the State's proposal was not an "as-is" acceptance, it constituted a rejection of the State's proposal. That is, UE's failure to unconditionally and without qualification accept the State's initial offer prior to the January 10, 2017 bargaining session, coupled with its reaffirmation of its initial offer at the bargaining session, constituted a rejection of the State's December 20, 2016 offer. *See* Stipulation of Facts ¶¶ 12, 14 (App. at 66, 67). At that point (i.e., January 10, 2017), the State's offer ceased to exist and was no longer available. Given the undisputed facts, as of January 10, 2017, there was no "offer" on the table by the State for UE to "accept" in mid-February 2017. *See* 1 Williston on Contracts § 5:3 (4th ed.) (stating "[w]hen an offer has been rejected, it ceases to exist, and a subsequent attempted acceptance is inoperative"); *see also Beaumont v. Prieto*, 249 U.S. 554 (1919) (holding that once an offeree rejects on

offer, the offeree has no right to hold the offeror to the initial offer and that all the offeree can do is "to make an offer in his turn"). This Court, therefore, should find that the district court applied an improper standard and that there was no contract.

However, even if this Court finds that the district court applied the proper legal standard articulated in *Pepsi-Cola*, this Court should nonetheless find that the district court erred because under the undisputed facts of this case, a reasonable person would believe that the State's offer was withdrawn. *See* Def.'s Memo. of Authorities in Support of Summ. J., or in the alternative, Motion to Stay p. 16-19 (App. at 87-90). Under *Pepsi-Cola*, "an offer, once made, will remain on the table unless withdrawn by the offeror or unless circumstances arise which would lead the parties to reasonably believe that the offer has been withdrawn." 659 F.2d at 90; *see also* 10 Emp. Coord. *Labor Relations* § 37:43 (stating in "an offer remains open and on the table unless: the party making the offer explicitly withdraws it; *circumstances arise that would lead the employer and union reasonably to believe that the offer has been withdrawn*" (emphasis added)).

Here, a reasonable person would believe that the State's December 20, 2016 offer was withdrawn. First, under common law contracting principles, because UE did not accept the State's offer at the January 10, 2017 bargaining session and UE reaffirmed its December 6, 2016 offer, UE's conduct constituted a rejection of the State's offer. *Baker*, 37 Iowa at 189. Second, a reasonable party would have understood the State's position was contingent upon and subject to legislative action. On February 7, 2017, the Iowa Senate introduced SF 213 and on February 9, the Iowa House introduced HF 291, both of which, in relevant part, sought to substantially amend the public bargaining provisions in Iowa Code chapter 20. The legislature ultimately passed HF 291, which was sent to the Governor on February 16, 2017, and the Governor signed the bill into law on February 17, 2017. The legislature deemed the amendments to public bargaining to be of "immediate importance" and therefore, those provisions became effective upon the Governor's February 17 signature. 2017 Iowa Acts ch. 2, § 26. At the January 10, 2017 bargaining session, UE became aware the State's bargaining was contingent on legislative action and UE also understood the State would not deviate in bargaining to any position contrary to that

contained in its initial offer as it was waiting to see whether the Iowa legislature intended to amend chapter 20. *See* Stipulation of Facts ¶ 12 (App. at 66). Because the State did not intend to further negotiate until legislative direction became clearer, the parties mutually agreed to cancel bargaining sessions previously scheduled for January 11, 18, and 19. Stipulation of Facts ¶¶ 12-13 (App. at 66). Under these circumstances, a reasonable party would have understood the State's December 20, 2017 offer to have been withdrawn pending legislative action. Accordingly, even if this Court finds that the district court applied the proper legal standard, it should nonetheless find that the district court erred because under the undisputed facts of this case, a reasonable person would believe that the State's offer was withdrawn.

CONCLUSION

For the reasons set forth above, the State respectfully request that this Court reverse the district court's rulings on the State's motion to dismiss and the State's motion for summary judgment and dismiss this case.

REQUEST FOR ORAL ARGUMENT

The State requests oral argument.

Respectfully submitted,

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