IN THE SUPREME COURT FOR THE STATE OF IOWA
No. 22-0790

UE LOCAL 893/IUP,
Appellee/Cross-Appellant,

vs.

STATE OF IOWA,
Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Polk County,
The Honorable Paul D. Scott

Appellee/Cross–Appellant's Combined Reply Brief

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REPLY ISSUES

I. THE STATE'S WILLFUL AND INTENTIONAL FAILURE TO ABIDE BY THE CONTRACT WARRANTS ATTORNEY FEES

From the district court to the supreme court and back again, this case and its predecessor have been litigated over a half-decade. During that time, UE suffered devastating financial losses from the State's failure to abide by its contractual obligations, namely, failing to deduct dues and not paying the wages UE's members are entitled to for nearly five years. The State's intentional failure to adhere to the contract, despite numerous courts ordering otherwise, warrants attorney fees. In the interest of justice, this Court should reverse the district court's decision denying attorney fees.

Iowa courts have allowed common law attorney fees for over 100 years. *See Baldwin v. City of Estherville*, 929 N.W.2d 691, 701 (Iowa 2019). "Although the traditional American rule ordinarily disfavors the allowance of attorneys' fees in the absence of statutory or contractual authorization, … courts, in the exercise of their equitable powers, may award attorneys' fees *when the interests of justice so require*." *Hall v. Cole*, 412 U.S. 1, 4–5 (1973); *see also, e.g.*, *Williams v. Van Sickel*, 659 N.W.2d 572, 579 (Iowa 2003). An exception to the rule arises "when the losing

party has acted in bad faith," *Baldwin*, 929 N.W.2d at 700, and "the culpability of the defendant's conduct exceeds the "willful and wanton disregard for the rights of another"; such conduct must rise to the level of oppression or connivance to harass or injure another." *Hockenberg Equip. Co. v. Hockenberg's Equip. & Supply Co. of Des Moines*, 510 N.W.2d 153, 159–60 (Iowa 1993). " 'Connivance" is defined as 'voluntary blindness [or] an intentional failure to discover or prevent the wrong.'" *Id.* at 159.

Courts "have declined to uphold awards under the bad-faith exception absent both 'clear evidence' that the challenged actions 'are entirely without color and [are taken] for reasons of harassment or delay or for other improper purposes,' and 'a high degree of specificity in the factual findings of [the] lower courts.'" *Dow Chem. Pac. Ltd. v. Rascator Mar. S.A.*, 782 F.2d 329, 344 (2d Cir. 1986) (internal citations and quotations omitted). In applying the bad faith exception, "the appropriate focus for the court is the conduct of the party in instigating or maintaining the litigation, for an assessment of whether there has been substantive bad faith as exhibited by, for example, its pursuit of frivolous contentions, or procedural bad faith as exhibited by, for example, its use of oppressive tactics or its willful violations of court orders." *Id.* at 345.

The State presents this issue as if legitimate disputes prevented it from fulfilling all contract provisions. This is simply not the case. The State argues, "after the district court ruled in the first lawsuit [LACL137250] that contracts had been formed and this Court denied the State's motion to stay, the State promptly began performing under the contract." (Appellant Reply Br. p. 16). The State fails to mention that it cherry-picked which contract provisions it would perform.

The State failed to perform the non-economic items, including personal leave, bulletin board usage, union leave, union visitation time, and union orientation, which were awarded in judgment from the district court in which this appeal arises. (App. 138). These provisions would have been simple to implement, yet the State did not.

The State also failed to implement wage benefits and dues deduction as required by the contract. (App. 123). The State then, as it does now, argues it was not permitted to deduct dues after "the legislature enacted sweeping changes to Iowa Code chapter 20." (Appellant Reply Br. p. 16). The district court in the first lawsuit also in its ruling held the contracts had been formed on February 10, 2017, prior to the legislative changes. (App. 12-19). In fact, the legislation carved out

an exception providing this amendment "does not apply to dues deductions required by collective bargaining agreements which have been ratified…before the effective date of this division of this Act." Iowa Acts 2017 (87 G.A.) ch. 2, H.G. 291, § 27, eff. Feb. 17, 2017. The State knew then, as it knows now, it was contractually obligated to deduct dues during the 2017-2019 term, and therefore, having failed to do so is obligated to UE for those dues.

It is a hard-pressed argument to buy that there "were legitimate disputes that required judicial resolution" when the State evidently agreed a contract had been formed after the very first district court ruling, in so much it "began performing under the contracts." (Appellant Reply Br. p. 16-19). Yet, the State stood by its uncolorable argument that deducting dues would, in some way or another, be a violation of law, despite explicit knowledge the legislative changes it relied on carved out an obvious exception, which applied in this matter.

The State also contends, "As the State began performing the contracts, the parties disputed the amounts of back pay owed…" and "undertook the laboring oar to provide the court with documentation and testimony about what amounts were due to each employee for each

category of pay." (Appellant Reply Br. p. 17-18). The State did, perhaps, undertake the "laboring oar" in calculating the wages it owed its *own* employees, but as the employer, that was and is its responsibility, to calculate and pay its employees the wages they are entitled to. Furthermore, that information was only privy to the State, not UE members or UE. The State knew and admitted, based on its own calculations, that it owed back pay and FLSA overtime pay.

The Eighth Circuit provides further guidance on when a union is entitled to attorney fees for failing to deduct dues. *See Food Handlers Loc. 425 of Amalgamated Meat Cutters & Butcher Workmen of N. Am., AFL-CIO v. Valmac Indus., Inc.*, 528 F.2d 217 (8th Cir. 1975). In *Food Handlers Loc.*, and much like the case at hand, during negotiations of a successor collective bargaining agreement, the parties proposed to continue the old contract provisions into the new one, specifically the provision regarding dues deductions. *Id*. at 218. When the employer, acting as scrivener, deduced the agreement to writing, the employer unilaterally changed the provision to essentially eliminate any responsibility for deducting dues for employees who had not previously provided authorization, despite the agreement to carry forward the old

provision into the new. *Id*. The court held the employer company was liable in damages for the total dues lost by the union due to the company's conduct, and the union was entitled to attorney fees. *Id*.

Here, and similar to *Food Handlers Loc.*, UE and the State began negotiations for the successor agreements, and because it was a mature relationship, neither party sought changes to many of the provisions. (App. 122). Regarding dues deductions, the State proposed to maintain the provisions with the "current contract language," and UE proposed to maintain the provisions as the "status quo." (App. 236-248). The parties agreed to carry forward the old provisions into the new. While the State did not "physically" change the contract provision, it blatantly disregarded the contract and made its failed argument that a contract had not been formed in hopes of avoiding continuing to deduct dues and relying on a legislative change that clearly did not apply. The State acted in bad faith. The State knew its obligations. (App. 132). The State knew the financial impact that failing to deduct dues would have on the union. (App. 132). Yet, the State breached the contract anyway, and refused to abide by it even after numerous courts directing it to do so.

While the "underlying rationale of 'fee shifting' [attorney fees] is, of course, punitive…" *Hall*, 412 U.S. 1 at 5., in the context of federal labor law, attorney fees are considered compensatory. *See United Steelworkers of Am., AFL-CIO v. Butler Mfg. Co.*, 439 F.2d 1110 (8th Cir. 1971). In *United Steelworkers of Am.*, the court held an award of attorney fees to the union was justified where the employer failed to pay an insurance premium due on behalf of the union members, in accordance with the terms of the collective bargaining agreement. 439 F.2d at 1112. The court characterized the award as compensatory, rather than punitive, for suits brought to enforce union members labor rights. *See Id.* While this case does not involve a question of national labor policy, it's important to note "that our national labor policy favors unionization and the execution and observance of collective bargaining agreements between employers and employees as a means of realizing that end [of industrial stability]." *Loc. 127, United Shoe Workers of Am., AFL-CIO v. Brooks Shoe Mfg. Co.*, 298 F.2d 277, 283 (3d Cir. 1962). Iowa Code §20.1 echoes that sentiment:

> The general assembly declares that it is the public policy of the state to promote harmonious and cooperative relationships between government and its employees by permitting public employees to organize and bargain collectively; to protect the citizens of this state by assuring effective and orderly operations of government in providing

> for their health, safety, and welfare; to prohibit and prevent all strikes by public employees; and to protect the rights of public employees to join or refuse to join, and to participate in or refuse to participate in, employee organizations.

Further, this Court has recognized the importance of adherence to collective bargaining agreements, especially when the State is a party:

> It would be no favor to the State to exonerate it from contractual liability. To do so would seriously impair its ability to function. A government must finance its affairs, must contract for buildings, highways, and a myriad of other public improvements and services. It would lead to untenable results if a government, after having contracted for needed things, did not have to pay for them. The rules of economics seem to exact a terrible price from those of uncertain responsibility. The few persons or institutions willing to deal with an exempt state would necessarily factor in the cost of such a tentative chance to collect. This cost to the State would ultimately be borne by the public.

AFSCME/Iowa Council 61 v. State, 484 N.W.2d 390, 394 (Iowa 1992).

An award of attorney fees in this case would help deter future conduct, compensate the union for enforcing their rights, set a clear reminder that "it would be not favor to the State to exonerate it from contractual liability," and to maintain the confidence of the workers and laborers of Iowa that are the backbone of this great state.

CONCLUSION

The State's voluntary blindness and intentional failure to abide by the contract and willful breach warrants attorney fees, and in the interest of justice, so requires.

REQUEST FOR ORAL ARGUMENT

Appellee requests to be heard in oral argument in this matter.

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE AND TYPE STYLE REQUIREMENTS

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) (no more than 14,000 words) because this brief contains 1,840 words, excluding the parts of the brief exempted by Rule 6.903(1)(g)(1), which are the table of contents, table of authorities, and certificates.

This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P.6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word for Office 365 MSO in font size 14, Century Schoolbook.

/s/ Carly R. Scott Date: October 19, 2022
Carly Scott

CERTIFICATE OF FILING AND SERVICE

I hereby certify e-filing of the Appellee's Reply Brief via EDMS with the Appellate Court, with the following counsel served by EDMS:

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I certify that on October 19, 2022, the Appellee's Reply Brief was served on Appellant/Cross-Appellee State of Iowa.

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