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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA, Plaintiff/Counterclaim Defendant, v. ALASKA STATE EMPLOYEES ASSOCATION/AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES LOCAL 52, AFL-CIO, Defendant/Counterclaimant.	Case No. 3AN-19-09971CI
ALASKA STATE EMPLOYEES ASSOCATION/AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES LOCAL 52, AFL-CIO, Third-Party Plaintiff, v. MICHAEL J. DUNLEAVY, in his official capacity as Governor of Alaska; KEVIN G. CLARKSON, in his official capacity as Attorney General of Alaska; KELLY TSHIBAKA, in her official capacity as Commissioner of the Alaska Department of Administration; and STATE OF ALASKA, DEPARTMENT OF ADMINISTRATION, Third-Party Defendants.	

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OPPOSITION TO MOTION FOR A PRELIMINARY INJUNCTION AND MOTION FOR CONSOLIDATION OF PRELIMINARY-INJUNCTION PROCEEDINGS WITH MERITS ADJUDICATION AND FOR ENTRY OF FINAL JUDGMENT

The State of Alaska and the Third-Party Defendants (collectively, "the State") oppose the motion of Alaska State Employees Association/American Federation of State, County and Municipal Employees Local 52, AFL-CIO ("Union") seeking a preliminary injunction. In addition, the State hereby moves to advance and consolidate a merits adjudication with the preliminary-injunction proceedings so that the Court may expeditiously enter a final judgment on the merits. The State conferred with the Union, which opposes the State's motion to consolidate.[1]

BACKGROUND

On September 25, 2019, the Union filed a motion seeking a temporary restraining order and a preliminary injunction "halting implementation of the Attorney General's August 27, 2019 opinion letter and enjoining any changes to the State's dues deduction procedures pending the resolution of this litigation." Motion for a Temporary Restraining Order and Preliminary Injunction ("Motion") at 46.

On October 1, 2019, the State filed its opposition to the Motion. The State argued that the Court should not grant the TRO because, *inter alia*, the Union was unlikely to succeed on the merits of its claims, and the balance of hardships weighed against granting a TRO. On October 3, 2019, the Court granted the Motion in part, issuing a temporary restraining order that enjoined the State and Third-Party Defendants "from taking any actions to implement the Attorney General's August 27, 2019 opinion letter or the State's September 26, 2019 Administrative Order No. 312, and from making any

[1] *See* Affidavit of Counsel dated October 7, 2019, attached.

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changes to the State employee dues deduction practices that were in place before the August 27, 2019 AG Opinion was issued." TRO at 22-23.

ARGUMENT

I. The Court should deny the motion for a preliminary injunction.

The Court should deny the motion for a preliminary injunction for the reasons stated in the State's Opposition to the Motion for a TRO. In the interests of judicial efficiency, the State adopts and fully incorporates its arguments here. The State's TRO Opposition is attached as Exhibit A.

As previously explained, the Union is unlikely to succeed on the merits of its claims that the State must take fees from nonconsenting employees and cannot implement Administrative Order No. 312 because (1) the First Amendment prohibits the State from taking fees from nonconsenting employees and mandates the employee protections created by Administrative Order No. 312; (2) PERA does not require the State to deduct fees from nonconsenting employees and cannot override the requirements of the First Amendment; (3) the Contracts Clause does not require the State to deduct fees from nonconsenting employees and does not prohibit the implementation of Administrative Order No. 312; and (4) stopping the collection of dues from nonconsenting employees and implementing Administrative Order No. 312 does not violate the Administrative Procedure Act. State TRO Opp. at 19-31, 33-43. In addition, the balance of hardships weighs against granting a preliminary injunction because the Union will suffer no irreparable harm if the State honors employee requests to stop dues deductions and implements Administrative Order No. 312, and the State

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and the public interest will be harmed by a preliminary injunction. TRO Opp. at 31-33, 43-46. Finally, the Union is not entitled to a preliminary injunction to maintain the status quo pending arbitration of its grievance. State TRO Opp. at 46-49.

II. The Court should advance and consolidate preliminary-injunction proceedings with its adjudication of the case on the merits.

"Alaska Civil Rule 65(a)(2), based on Rule 65 of the Federal Rules of Civil Procedure, provides that '[b]efore or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application.'" *Haggblom v. City of Dillingham*, 191 P.3d 991, 999 (Alaska 2008). "Consolidation is warranted where the legal issues have been fully briefed and where further presentation of evidence would not alter the factual conclusions upon which the court relies to decide the merits of the case." *Chief Probation Officers of California v. Shalala*, 1996 WL 134890 at *6 (N.D. Cal. Mar. 14, 1996) (citing *Air Line Pilots Ass'n, Intern. v. Alaska Airlines, Inc.*, 898 F.2d 1393, 1397 (9th Cir. 1990)). *See also, e.g., Haggblom*, 191 P.3d at 1000 (upholding consolidation because there were no additional facts to be presented relevant to the legal issues); *Ctr. for Powell Crossing, LLC v. City of Powell, Ohio*, 173 F. Supp. 3d 639, 653 (S.D. Ohio 2016) (consolidating the preliminary-injunction motion with a merits decision because there was "no evidence to present to the court beyond what was [already] submitted" and the parties "have presented their legal arguments in their briefs"); *Prudential Sec., Inc. v. Kucinski*, 947 F. Supp. 462, 465 (M.D. Fla. 1996) (consolidating the preliminary-injunction motion with a merits decision because

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"[g]iven the nature of the case, involving issues of law ..., the case is susceptible of decision on the briefs without necessity of a hearing").

Here, both parties acknowledge that the issues presented in this case are pure questions of law and that no evidentiary hearing is needed. *See* TRO Order at 7. In addition, the parties already have fully briefed these issues. *See id.* ("The briefs by both parties are excellent and address all questions."). There thus is no need for another round of briefing on these pure questions of law. *See NOW v. Operation Rescue*, 747 F. Supp. 760, 768 (D.D.C. 1990) (Rule 65(a)(2) "preserve[s] judicial resources and save[s] the parties from wasteful duplication of effort"). In addition, consolidation is warranted because it "minimizes the potential adverse effect of what may prove to be an unjustified restraint" on the State and Third-Party Defendants. Wright & Miller, *Federal Practice & Procedure* § 2950. Although the Court disagrees, *see* TRO Order at 19-22, the State maintains that an injunction will harm both the State and its employees, *see* State TRO Opp. at 31-33, 43-46. This "urgency ... makes a rapid determination of the merits especially important." Wright & Miller, *supra*, § 2950.

The Union has informed the State that it opposes the motion to consolidate.[2] But there are no grounds for doing so. These issues have been fully briefed and raise pure questions of law that are ready to be resolved. The Union thus would suffer no prejudice if preliminary-injunction proceedings were consolidated with a merits adjudication. *See Haggblom*, 191 P.3d at 999. Additional proceedings and briefing would do nothing

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2 *Id.*

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more than delay final resolution of these important issues. The State, the State's employees, and, indeed, the Union, would all benefit from an expeditious resolution of this case.

III. The Court should enter judgment for the State.

For the reasons articulated in the State's Opposition to the TRO, the Court should enter a final judgment in favor of the State on the claims raised in the State's amended complaint, and a final judgment in favor of the State and the Third-Party Defendants on the Union's counterclaims and claims raised in the Union's third-party complaint.

CONCLUSION

For the foregoing reasons, the Court should deny the Union's request for a preliminary injunction. In addition, the Court should advance and consolidate a merits adjudication with the preliminary-injunction proceedings so that it may expeditiously enter a final judgment on the merits. Finally, the Court should enter a final judgment in favor of the State on the claims raised in the State's amended complaint, and a final judgment in favor of the State and Third-Party Defendants on the Union's counterclaims and claims raised in the Union's third-party complaint.

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DATED October 7, 2019.

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