

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Philip A. Brimmer

Civil Action No. 12-cv-01694-PAB-MEH

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL #111,
DOMINGO N. MERENO,
DAVID L. WILLIAMS,
GUY E. FORTI,
GERALD E. KING, and
VICKI WILLIAMS,

Plaintiffs,

v.

PUBLIC SERVICE COMPANY OF COLORADO, and
XCEL ENERGY INC. EMPLOYEE WELFARE BENEFIT PLAN, a/k/a The Public
Service Company and Participating Subsidiary Companies Retirees' Medical Managed
Care/Medicare Coordinated Plan,

Defendants.

ORDER

This matter is before the Court on the Unopposed Motion for Stay of Proceedings [Docket No. 47] filed by plaintiff International Brotherhood of Electrical Workers, Local #111 ("IBEW"). IBEW requests that the Court stay further proceedings in this case pending IBEW's appeal of the Court's May 2, 2013 Order [Docket No. 40] denying the Motion for Judgment on the Pleadings and on First Claim for Relief, and Motion to Stay Proceedings Pending Arbitration filed by IBEW and plaintiffs Domingo N. Moreno, David L. Williams, Guy E. Forti, Gerald E. King, and Vicki Williams. Docket No. 20. On May 9, 2013, IBEW filed a notice [Docket No. 41] indicating that it had appealed the May 2, 2013 Order pursuant to 28 U.S.C. § 1292(a)(1) and 9 U.S.C.

§ 16(a)(1).

IBEW's motion to stay is based on its arguments that (1) its appeal divested the Court of jurisdiction and (2) staying the case pending the outcome of the appeal would serve judicial economy. Docket No. 47 at 2-3, ¶¶ 4-5. Defendants agree that staying this case would serve judicial economy and reserve all other arguments in response to IBEW's motion to stay. Docket No. 47 at 3, ¶ 6.

A "district court is divested of jurisdiction while a non-frivolous [9 U.S.C. § 16(a)] motion is pending" because "the failure to grant a stay pending [an appeal of a denial of arbitration] results in a denial or impairment of the appellant's ability to obtain its legal entitlement to avoidance of litigation." *McCauley v. Halliburton Energy Servs., Inc.*, 413 F.3d 1158, 1162 (10th Cir. 2005). "Continuation of proceedings in the district court largely defeats the point of the appeal and creates a risk of inconsistent handling of the case by two tribunals." *Id.* (internal citations omitted).

As IBEW filed an appeal pursuant to § 16(a) and the Court has not certified that appeal as frivolous, the Court does not have jurisdiction to proceed until the Tenth Circuit has ruled on the appeal. *See id.* Furthermore, the Court notes that staying these proceedings will not prejudice either party and that neither defendants nor the individual plaintiffs who did not join in the appeal object to a stay. *See* Docket No. 47 at 3-5, ¶¶ 6-8. Wherefore, it is

ORDERED that this matter is STAYED until the Tenth Circuit Court of Appeals has issued a mandate in connection with the disposition of plaintiff International Brotherhood of Electrical Workers, Local #111's interlocutory appeal.

DATED May 22, 2013.

BY THE COURT:

s/Philip A. Brimmer
PHILIP A. BRIMMER
United States District Judge