

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF MAINE**

**PRECISION MILLWORK, INC.,** )  
 )  
 **Plaintiff** )  
 )  
 **v.** )  
 )  
 **UNITED BROTHERHOOD OF** )  
 **CARPENTERS & JOINERS OF** )  
 **AMERICA, LOCAL NO. 1996, et al.,** )  
 )  
 **Defendants** )

**Docket No. 98-447-P-H**

**RECOMMENDED DECISION ON DEFENDANTS' MOTION**  
**FOR SUMMARY JUDGMENT**

The defendants, United Brotherhood of Carpenters & Joiners of America, Local 1996, and the New England Regional Council of Carpenters (collectively, “the Union”), move for summary judgment in this action seeking a declaratory judgment that a collective bargaining agreement executed in 1995 has been breached. The memorandum of law submitted by the defendants in support of their motion includes a request that the court dismiss the action under the doctrine of primary jurisdiction in deference to a proceeding now pending before the National Labor Relations Board (“NLRB”). Defendants’ Memorandum in Support of Their Motion for Summary Judgment (“Defendants’ Memorandum”) (Docket No. 7) at 14-16. I recommend that the court stay this action pending the NLRB’s determination of whether to charge Precision with an unfair labor practice and, if it does, then dismiss this action without prejudice.

After this action was filed in late December 1998 and before filing the instant motion, the Union filed an unfair labor practices claim with the NLRB against the plaintiff, Precision Millwork, Inc., charging Precision with repudiating the contract which the complaint in this action alleges that the Union has breached. Letter dated June 17, 1999 from Rosemary Pye to New England Regional Council of Carpenters, Exhibit J to Defendants' Combined Statement of Undisputed Material Facts and Declaration of Mark Erlich ("Defendants' SMF") (Docket No. 8). Precision has not indicated any disagreement with the Union's statement that this action involves "the validity of [Precision's] defenses to the Union's . . . unfair labor practice charge." Defendants' Memorandum at 16.

This action is brought under the Labor Management Relations Act ("LMRA" or "the Act"), 29 U.S.C. § 141 *et seq.*, and particularly 29 U.S.C. § 185, also known as section 301 of the Act.

The primary jurisdiction doctrine is

specifically applicable to claims properly cognizable in court that contain some issue within the special competence of an administrative agency. It requires the court to enable a "referral" to the agency, staying further proceedings so as to give the parties reasonable opportunity to seek an administrative ruling.

*Reiter v. Cooper*, 507 U.S. 258, 268 (1993). The court may retain jurisdiction or, "if the parties would not be unfairly disadvantaged," dismiss the case without prejudice. *Id.* See also *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 245 (1959) (when activity is arguably subject to LMRA, federal courts "must" defer to NLRB "if the danger of state interference with national policy is to be averted").

The First Circuit has stated that the doctrine of primary jurisdiction is intended to serve "as a means of coordinating administrative and judicial machinery" and to "promote uniformity and take advantage of agencies' special expertise." *Mashpee Tribe v. New Seabury Corp.*, 592 F.2d 575, 580

(1st Cir. 1979). There are three factors that guide the decision whether to defer a matter to an agency under the doctrine:

(1) whether the agency determination [lies] at the heart of the task assigned the agency by Congress; (2) whether agency expertise [is] required to unravel intricate, technical facts; and (3) whether, though perhaps not determinative, the agency determination would materially aid the court.

*Massachusetts v. Blackstone Valley Elec. Co.*, 67 F.3d 981, 992 (1st Cir. 1995), quoting *Mashpee Tribe*, 592 F.2d at 580-81. Also important in any consideration of possible deference is the avoidance of conflict and whether there is some urgency — whether “[o]ngoing business conduct is likely to be involved and harm, possibly irreparable, may be accruing.” *PHC, Inc. v. Pioneer Healthcare, Inc.*, 75 F.3d 75, 80 (1st Cir. 1996).

In its objection to the request for dismissal under the doctrine of primary jurisdiction, filed on August 13, 1999, Precision pointed out that this court and the NLRB have concurrent jurisdiction when the interpretation of a collective bargaining agreement is at issue and that the NLRB had not yet taken action on the Union’s charge. Plaintiff’s Objection to Defendants’ Motion for Summary Judgment (Docket No. 9) at 8-10. These facts, it contended, showed that there was “no reason” for this court to defer to the NLRB. *Id.* at 10. Since that time, the Union’s counsel has informed the court that, in connection with the NLRB’s investigation of the Union’s unfair labor practice charge, it has advised counsel that it is prepared to receive the Union’s evidence in support of this charge and counsel has begun to make arrangements to present that evidence. Supplemental Declaration of Christopher N. Souris in Support of Defendants’ Motion for Summary Judgment (Docket No. 16) at 1-2.

With respect to Precision’s first point, it is only when the courts and a governmental agency

have concurrent jurisdiction that the doctrine of primary jurisdiction comes into play. Considering the factors identified by the First Circuit as guiding the decision whether a court should defer to an agency under the doctrine in light of the facts in this case, it is apparent that the NLRB must decide the issue raised by the complaint in this action in order to determine whether an unfair labor practice has occurred. The issue before the NLRB “lies at the heart of the task assigned [to it] by Congress,” and resolution of that issue would materially aid the court. While the contract at issue is not itself particularly intricate or technical, the NLRB’s expertise will be valuable due to the nature of the issue, which involves the building and construction industry, an industry that is treated differently from all others by the LMRA. 29 U.S.C. § 158(f). Precision has made no attempt to show that it will be harmed should this court defer to the NLRB proceeding. It would be best to avoid conflict between the NLRB and the court on this issue, if possible.

While the pendency of similar issues before the NLRB and the court, does not require dismissal or stay of a section 301 contract action, courts may decline to act where the issues presented fall within the scope of the NLRB’s primary jurisdiction, as primary jurisdiction stems from the judiciary’s deference to an administrative agency’s expertise. Indeed, consideration of the history and purposes of the primary jurisdiction doctrine convinces us that district courts should not serve as the initial arbiters of unfair labor practice charges in section 301 actions.

*Newspaper Guild of Salem v. Ottaway Newspapers, Inc.*, 79 F.3d 1273, 1284 (1st Cir. 1996)  
(citations and internal punctuation omitted).

On balance, I conclude that the court should defer to the NLRB proceeding in this case under the doctrine of primary jurisdiction.

Accordingly, I recommend that the court **STAY** this matter pending the NLRB’s determination as to whether to charge Precision with an unfair labor practice, that counsel for the

Union be ordered to inform the court immediately when that determination has been made, and that the court dismiss this action without prejudice<sup>1</sup> in the event that the NLRB proceeds with such a charge.

**NOTICE**

***A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.***

***Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.***

***Dated this 27th day of September, 1999.***

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***David M. Cohen***  
***United States Magistrate Judge***

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<sup>1</sup> In the absence of any showing by Precision that it would be subjected to unfair disadvantage by dismissal of this action without prejudice, the only consideration apparent to me is the possible effect of the applicable statute of limitations. Actions under 29 U.S.C. § 185 adopt the applicable state statute of limitations. *International Union, United Auto., Aerospace & Agric. Implement Workers of Am.*, 383 U.S. 696, 704-05 (1966). In Maine, the statute of limitations for contract actions is six years. 14 M.R.S.A. § 752. The collective bargaining agreement in this case was signed on June 6, 1995, Exhibit F to Defendants' SMF, and the earliest possible date for expiration of the statute of limitations is therefore June 6, 2001, although I do not mean to suggest that this is in fact the date from which the statute of limitations would run in this case. In any event, the applicable statute of limitations does not appear to have a significant bearing on this action at this time.