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

ALASKA STATE EMPLOYEES ASSOCIATION, LOCAL 52, *Plaintiff,* v. STATE OF ALASKA, DEPARTMENT OF HEALTH AND HUMAN SERVICES, DEPARTMENT OF ADMINISTRATION, OFFICE of MICHAEL J. DUNLEAVY, *Defendant.*	Case No. 3AN-19-06327 CI

ORDER PARTIALLY GRANTING MOTION TO DISMISS AND DENYING PRELIMINARY INJUNCTION

This matter is before the Court on the State's *Motion to Dismiss* and the *Renewed Motion for Injunctive Relief* and *Revised Proposed Order* filed by the Alaska State Employees Association, Local 52 (the Union). These filings are closely related, so the Court addresses them together. After considering the parties' oral arguments, presented on October 16, 2019, and all of the parties' briefing,[1] the Court grants in part and denies in part the State's motion, and denies the Union's motion at this time. The Court dismisses the Union's claims that arise under the parties' Collective Bargaining Agreement (CBA), because the Union must arbitrate these claims before filing them in court. Relatedly, the Union is not entitled to an injunction while arbitration is pending, because the Union's proposed injunction does more than merely maintain the status quo, constitutes a disfavored mandatory or affirmative injunction, and is not necessary to

[1] In the interest of having all available information, the Court denies the State's *Motion to Strike Supplemental Authority*, and accepts the Union's response to the State's response to the Court's order regarding the Union's revised proposed preliminary injunction order.

preserve the effectiveness of arbitration. The Court also dismisses the Union's claim under the Alaska Constitution, because the legislature has passed no law that could impair the CBA. Finally, the Court does not dismiss the Union's declaratory judgment claim because, pursuant to applicable precedent, the Union has standing to allege that the State violated Alaska's procurement code.

At an earlier stage in this case, the Court may have reached a different conclusion regarding the claims under the CBA and injunctive relief. The Court still could reach a different conclusion on these issues if circumstances change or if the Union re-files these claims following arbitration. Nevertheless, the Court dismisses, without prejudice to refiling, several of the Union's claims and denies the Union's current request for injunctive relief, while allowing the Union's declaratory judgment claim to proceed.

I. Background and Pending Motions

This matter was first before the Court on April 22, 2019, for a hearing on the Union's initial request for a temporary restraining order and preliminary injunction. The Union initially sought to prevent the State from privatizing the Alaska Psychiatric Institute (API).[2] The Union alleged the State was violating the CBA by contracting with Wellpath Recovery Solutions, LLC to manage and, ultimately, take over API. However, at the April 22nd hearing, the State announced that it had entered a new contract with Wellpath that did not include privatization of API. The Court provided the Union a chance to review this contract and held another hearing on April 25th. At this hearing, the Union stated it had reached certain agreements with the State and acknowledged that its initial motion for injunctive relief was moot.

After these developments, the State filed its motion to dismiss, which remains before the Court. The State argues that the Court must dismiss all of the Union's contract claims because Article 16 of the CBA requires the Union to attempt arbitration before the Court can enforce the CBA.[3] The provision the Union seeks to enforce is Article 13,

[2] Union's *Revised Proposed Order*, (April 18, 2019).
[3] State's *Motion to Dismiss*, p. 8–9 (May 28, 2019).

which requires the State to complete a feasibility study before "contracting out"—essentially, privatizing—any union jobs at API.[4] The State also argues the Court must dismiss the Union's remaining claims, which do not arise under the CBA. The State contends that the Union cannot state a claim under the contract clause of the Alaska Constitution because the State has passed no law relating to the CBA, and that the Union cannot state a claim under Alaska's procurement laws because the Union lacks standing.[5]

In response to the State's motion to dismiss, the Union filed a new request for injunctive relief, the specific nature of which changed over time. At first, the Union sought an order directing the State to complete a feasibility study "within 90 days."[6] However, as the State made efforts to complete a feasibility study, without formally resurrecting the plan to privatize API, the Union appeared to request other actions by the State.[7] When the Court held oral argument on October 16, 2019, the Union acknowledged that its request for injunctive relief had indeed changed, so the Court ordered the Union to file another proposed order reflecting its current request.

The Union's *Revised Proposed Order*, filed October 17, 2019, details the request for injunctive relief currently before the Court. The Union seeks an order that the State is "enjoined from the continued breach of the [CBA]."[8] The proposed order also requires the State to meet with the Union about the need for a feasibility study; to complete the feasibility study by January 31, 2020; and to include the Union in the request-for-proposal process, by requiring the contractor to meet with the Union and by providing the Union with draft reports, progress reports, and other documents.[9]

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[4] *Id.*, p. 9; *Id.*, ex. 1, Collective Bargaining Agreement (CBA), art. 13.01(B). Although it did not attach the CBA to its complaint, the Union agrees that the Court may consider the CBA without converting the State's motion into a motion for summary judgment. Union's *Opposition to Motion to Dismiss and Renewed Motion for Injunctive Relief*, p. 3 (Sept. 9, 2019).

[5] State's *Motion to Dismiss*, p. 10–14.

[6] Union's *[Second Revised Proposed] Order*, p. 1 (Sept. 9, 2019).

[7] *See* Union's *Reply in Support of Motion for Injunctive Relief*, p. 2–3 (Oct. 7, 2019) (focusing on the State's alleged failure to communicate with the Union).

[8] Union's *Revised Proposed Order*, p. 1 (Oct. 17, 2019).

[9] *Id.*, p. 2.

Resolution of the Union's request for injunctive relief is necessarily intertwined with resolution of the State's motion to dismiss. As an initial matter, the Union's request depends on the strength of the Union's claims, as tested by the State's motion. More fundamentally, the Union requests injunctive relief even though it essentially concedes that the Court must dismiss its claims under the CBA for lack of arbitration. Accordingly, the Court first addresses the Union's CBA claims and request for injunctive relief. The Court then proceeds to address the Union's constitutional and declaratory judgment claims.

II. Discussion

The State moves to dismiss all of the Union's claims for "failure to state a claim upon which relief may be granted."[10] "Such a motion tests the legal sufficiency" of the Union's claims.[11] The Court must consider each of the Union's claims and dismiss any that are legally insufficient. Here, the Union states six claims, four of which arise under the CBA: breach of contract, anticipatory breach of contract, promissory estoppel, and breach of the covenant of good faith and fair dealing.[12] The Union's remaining two claims arise under Alaska's Constitution and procurement code, respectively.

A. CBA Claims

Claims arising under a CBA are legally insufficient if the CBA requires that these claims go to arbitration before coming to court. Employees and their unions must abide by a CBA's mandatory arbitration provision. "It is well-settled law that an employee must attempt to exhaust exclusive grievance and arbitration procedures established by a collective bargaining agreement before obtaining judicial review."[13] Indeed, "the common law and statutes of Alaska evince 'a strong public policy in favor of

[10] AK R. Civ. P. 12(b)(6).
[11] *Dworkin v. First Nat. Bank of Fairbanks*, 444 P.2d 777, 779 (Alaska 1968).
[12] Union's *Complaint*, p. 21–24 (April 15, 2019).
[13] *Schaub v. K & L Distributors, Inc.*, 115 P.3d 555, 560–61 (Alaska 2005); *Cozzen v. Municipality of Anchorage*, 907 P.2d 473, 475 (Alaska 1995) ("This court has consistently held that employees must first exhaust their contractual or administrative remedies, or show that they were excused from doing so, before pursuing a direct action against their employer.").

arbitration.'"[14] Accordingly, if the Union should have arbitrated its CBA claims first, the Court must dismiss these claims pending arbitration; employees and their unions "may not sue" until they exhaust their remedies under a CBA.[15]

There can be little doubt that all of the Union's claims under the CBA are subject to arbitration. The Union admitted as much in its briefing and at oral argument.[16] The Union even initiated the arbitration process before filing suit.[17] While the Union initially argued that arbitration could not result in the relief it seeks for breach of contract,[18] the Union seems to have abandoned this argument and, in any case, any order resulting from arbitration would be binding on both parties.[19]

While the Union's admission is sufficient for the Court to find the Union's CBA claims subject to arbitration, the Court also finds that the clear language of the CBA requires the Union to arbitrate any alleged breach of the CBA. The CBA states that "the Union . . . shall use the [arbitration] procedure as the sole means of settling grievances."[20] Grievances are "defined as any controversy or dispute involving the application or interpretation of the terms of [the CBA]."[21] The Union's breach of contract and anticipatory breach of contract claims are just such grievances. The Union alleges that the State breached Article 13 of the CBA,[22] as well as the State's future obligations under the parties' new CBA, which went into effect July 1, 2019.[23] Both of these allegations are

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[14] *Classified Employees Ass'n v. Matanuska-Susitna Borough Sch. Dist.*, 204 P.3d 347, 353 (Alaska 2009) (*quoting University of Alaska v. Modern Construction, Inc.*, 522 P.2d 1132, 1138 (Alaska 1974)).

[15] *Cozzen*, 907 P.2d at 475 (upholding grant of summary judgment for failure to exhaust contractual or remedies); *Standard Alaska Prod. Co. v. State Dep't of Revenue*, 773 P.2d 201, 206 (Alaska 1989) ("The superior court may dismiss an action over which it has jurisdiction where the plaintiff has improperly bypassed available administrative remedies.").

[16] Union's *Reply in Support of Motion for Injunctive Relief*, p. 6 ("[T]he underlying grievance is one that the parties are obligated to arbitrate.").

[17] Union's *Opposition to Motion to Dismiss . . .*, p. 13 ("In response to the State of Alaska's breach of the CBA, the Union filed a grievance.").

[18] *Id.*, p. 13.

[19] CBA, art. 16.03(A) ("The parties agree that the decision or award of the arbitrator shall be final and binding.").

[20] CBA, art. 16.01(A).

[21] *Id.*

[22] *Compl.* p. 21–22.

[23] *Id.*; *see Inman v. Clyde Hall Drilling Co.*, 369 P.2d 498, 502 (Alaska 1962).

disputes about the application and interpretation of the CBA. The Union does not argue that the new CBA alters the arbitration requirement, so both the breach of contract claim and the anticipatory breach of contract claim are subject to arbitration.

Although not as straightforward, the Union's remaining two claims under the CBA are also subject to arbitration. These claims are coextensive with the first two claims, independently subject to arbitration, or simply inapplicable. First, the Union alleges that the State breached the implied covenant of good faith and fair dealing by breaching and anticipatorily breaching Article 13 of the CBA and by failing "to treat the Union fairly."[24] If this claim restates the breach of contract and anticipatory breach of contract claims, it must be arbitrated. If this claim extends beyond the scope of these other claims, it still must be arbitrated. Employees and their unions must exhaust their available remedies before bringing breach of covenant claims, just as they must with breach of contract claims.[25] Accordingly, whether or not the breach of covenant claim restates the first two claims, it is subject to arbitration.

Next, the Union brings a claim under a theory of "promissory estoppel," contending that the Union entered into the new CBA in reliance on the State's promise to abide by its terms.[26] As a remedy, the Union seeks "legal enforcement of [both CBAs]."[27] The Union acknowledged at oral argument that this remedy is the same remedy it seeks in connection with its breach and anticipatory breach of contract claims. In this way, the Union's promissory estoppel claim appears identical to its contract claims. If so, it is subject to arbitration. If this claim is indeed a separate claim, it does not apply under the circumstances. Promissory estoppel claims generally allow parties to enforce an

[24] *Compl.* p. 23.

[25] *Reynolds-Rogers v. Dep't of Health & Soc. Servs.*, 436 P.3d 469, 474 (Alaska 2019), *reh'g denied* (Mar. 27, 2019) (approving the lower court's conclusions that "breach of the covenant is a contract-based claim; that the contract at issue was 'the Collective Bargaining Agreement between the State and the Alaska State Employees Association'; and that claims based on the covenant therefore had to be pursued by the contractual grievance policy.").

[26] *Compl.*, p. 24.

[27] *Id.*

agreement that does not qualify as a contract,[28] perhaps as an alternative claim to a breach of contract claim.[29] Here, neither party contests the validity of the CBA; both parties actually seek enforcement of different provisions of the CBA. With the Union's acknowledgment that this claim seeks redundant relief, and without any party arguing the CBA is invalid, this claim is either subject to arbitration or inapplicable here.

For these reasons, the Court finds all four of the Union's claims under the CBA are subject to arbitration, and, therefore, subject to dismissal. The Court dismisses the Union's breach of contract, anticipatory breach of contract, breach of covenant, and promissory estoppel claims without prejudice, to allow the Union to re-file those claims after attempting arbitration.[30]

B. Injunctive Relief

In acknowledging that it must first arbitrate its claims under the CBA, the Union essentially concedes the Court must dismiss, without prejudice, all of those claims. Nevertheless, the Union seeks a preliminary injunction while arbitration is pending. The Court concludes that the Union is not entitled to the injunctive relief it currently requests, which it characterizes as a "reverse *Boys Market[s]* injunction."[31]

Generally, a party is entitled to a preliminary injunction if that party can satisfy "either the balance of hardships or the probable success on the merits standard."[32] However, when a party seeks pre-arbitration enforcement of a CBA, that party must seek a reverse *Boys Markets* injunction, which has its own set of standards. Such an injunction is an exception to the general rule against injunctions in federal labor relations cases, whereby federal courts can enjoin an employer from altering the status quo before an arbitrator reaches a decision.[33] The purpose of a reverse *Boys Markets* injunction is to

[28] *Brady v. State*, 965 P.2d 1, 10 (Alaska 1998) ("The original point of promissory estoppel was to enable courts to enforce contract-like promises made unenforceable by technical defects or defenses.").

[29] *See, e.g., Thomas v. Archer*, 384 P.3d 791, 798 (Alaska 2016).

[30] *See Schaub*, 115 P.3d at 561.

[31] Union's *Reply in Support of Motion for Injunctive Relief*, p. 5.

[32] *Alsworth v. Seybert*, 323 P.3d 47, 54 (Alaska 2014).

[33] *See Am. Fed'n of State, Cty. & Mun. Employees, Council 31 v. Schwartz*, 343 Ill. App. 3d 553, 560, 797 N.E.2d 1087, 1091 (2003) (*citing Boys Markets, Inc. v. Retail Clerks Union*, 398 U.S. 235 (1970)). These

preserve the effectiveness of arbitration by preventing an employer from taking actions that change the status quo and that cannot practically be reversed, should employees prevail during arbitration.[34]

The Court considers the Union's request for a reverse *Boys Markets* injunction, even though Alaska courts have not explicitly adopted this sort of injunction. Alaska courts generally follow federal labor law,[35] but they have not, to this Court's knowledge, explicitly cited *Boys Markets* or ordered such an injunction. The Union cites Judge Miller's orders and other filings in a separate, ongoing case involving the present parties and their CBA, 3AN-19-09971 CI. That case, however, is distinguishable: Judge Miller explicitly did not order a reverse *Boys Markets* injunction;[36] none of the Union's claims arise under the CBA;[37] and the Union states a facially valid constitutional claim, which, as discussed below, the Union does not do here.[38]

The Alaska precedent that applies most closely to the concept of a reverse *Boys Markets* injunction is the Alaska Supreme Court's decision in *Fairbanks Fire Fighters Association v. City of Fairbanks*.[39] This decision, however, is also distinguishable. In that case, the court below had enjoined the city of Fairbanks from reducing the number of

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injunctions are the corollary to *Boys Markets* injunctions, which prevent employees from striking while arbitration is pending. *Id.*

[34] 20 Williston on Contracts § 56:79 (4th ed.) ("The reverse *Boys Markets* exception to the Norris-LaGuardia Act permits unions to obtain injunctions against employers to preserve the status quo pending arbitration of a labor dispute as long as: (1) the underlying dispute is subject to mandatory arbitration and (2) an injunction is necessary to prevent the arbitration process from becoming a hollow formality or meaningless ritual."); *Columbia Local, Am. Postal Workers Union, AFL-CIO v. Bolger*, 621 F.2d 615, 618 (4th Cir. 1980) ("[T]he appropriate test for issuance of injunction in the instant case is whether the conduct proposed must be enjoined because the available arbitral process could not possibly restore the status quo ante in an acceptable form were that conduct to be found violative of contract rights. This would render the arbitral process a hollow formality and necessitate injunction maintaining the status quo pending arbitration."); *Newspaper & Periodical Drivers' & Helpers' Union, Local 921 v. San Francisco Newspaper Agency*, 89 F.3d 629, 634 (9th Cir. 1996).

[35] *Alaska Pub. Employees Ass'n v. State, Dep't of Admin., Div. of Labor Relations*, 776 P.2d 1030, 1032 (Alaska 1989) ("We have followed federal decisions interpreting the [National Labor Relations Act] when the provisions of the NLRA are similar to state statutes."); *see* 8 AAC 97.450(b) ("Relevant decisions of the National Labor Relations Board and federal courts will be given great weight . . . .").

[36] Judge Miller's *Temporary Restraining Order*, p. 19, n. 37, 3AN-19-09971 CI (Oct. 3, 2019).

[37] Union's *Counterclaims and Third Party Complaint*, p. 23–34, 3AN-19-09971 CI (Sept. 25, 2019).

[38] *See infra* Section II C.

[39] 934 P.2d 759 (Alaska 1997).

firefighters while arbitration was pending, because the reduction posed a "threat of grave and serious harm to the public."[40] The Union does not allege such harm in the absence of injunctive relief in this case. Additionally, the CBA at issue in the Fairbanks case, unlike the CBA at issue here, explicitly required the city to maintain the status quo.[41] More broadly, the issue before the Supreme Court was attorney's fees, rather than the injunction itself.[42]

Acknowledging the lack of precedent directly addressing the use or acceptance of reverse *Boys Markets* injunctions in Alaska courts, the Court assumes for purposes of this motion that, consistent with Alaska courts' general adherence to federal labor law, the Court could order a reverse *Boys Markets* injunction. Nevertheless, the Court finds that the Union is not entitled to such an injunction under the present circumstances. A reverse *Boys Markets* injunction is appropriate only when necessary to maintain the status quo and to preserve the effectiveness of arbitration. The Union's current request for injunctive relief does not meet either requirement.

First, as recognized to some extent during oral argument, the Union's current request would not maintain the status quo. In fact, the Union requests a mandatory injunction, rather than a prohibitory injunction. Besides the requirement that reverse *Boys Markets* injunctions maintain the status quo, preliminary injunctions in general must maintain the status quo.[43] Courts are also loath to order mandatory injunctions, which "order[] an affirmative act or mandate[] a specified course of conduct."[44] Such injunctions "should be granted only in extreme or exceptional cases and with great caution."[45]

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[40] *Id.* at 761.
[41] *Id.* at 760.
[42] *Id.* at 761.
[43] *Martin v. Coastal Villages Region Fund*, 156 P.3d 1121, 1126 (Alaska 2007) ("The purpose of a preliminary injunction is to maintain the status quo.").
[44] *Cook Inlet Fisherman's Fund v. State, Dep't of Fish & Game*, 357 P.3d 789, 795 n.11 (Alaska 2015) (*citing* Black's Law Dictionary 904–05 (10th ed.2014)).
[45] *State v. Kluti Kaah Native Vill. of Copper Ctr.*, 831 P.2d 1270, 1274 n.9 (Alaska 1992) (*citing* 42 Am.Jur.2d Injunctions § 21 (1969)) (internal formatting omitted).

Here, each part of the Union's proposed injunction would change the status quo by requiring the State take certain actions that it is not currently required to take. The Union asks the Court to require that the State complete a feasibility study in January 2020 and include the Union in the RFP process.[46] However, the CBA includes no such deadline or requirements.[47] Similarly, the Union asks the Court to require that the State meet with the Union before completing a feasibility study. However, the parties have either already met, or they are not required to meet by the terms of the new CBA.[48]

Furthermore, these actions do not appear to have been required by the agreement the State and the Union reached in the course of this litigation. Based on the evidence currently before the Court, the State agreed to add specific language to its contracts with Wellpath and with the Public Consulting Group, Inc. (PCG).[49] The State has since cancelled its contract with PCG, but has added the agreed-upon language to subsequent contracts.[50] While it would be unacceptable for the State to violate its agreement with the Union, it does not appear the State has done so. Thus, what the Union requests is a mandatory injunction that would change the status quo by adding requirements to the CBA and the parties' agreement. This type of relief is generally unavailable and it cannot constitute a reverse *Boys Markets* injunction.

In addition to changing the status quo, the Union's request for injunctive relief is not necessary to maintain the effectiveness of arbitration. This is not a case where the Union seeks to prevent future State action which, if completed, would render any arbitration award in the Union's favor practically meaningless.[51] If the circumstances originally alleged in this case persisted, and if the Union still sought to enjoin a State

[46] Union's *Revised Proposed Order*, p. 2.

[47] The State contends, without opposition from the Union, that the new CBA requires no particular involvement by the Union in the RFP process. State's *Response to October 21 Court Order*, p. 13–14.

[48] *Id.* p. 12, n. 42 (*citing* CBA Article 13.01B ("[T]he agency will meet with the Union to discuss the need to conduct a feasibility study. If the parties do not meet or cannot agree, a feasibility study shall be conducted.")).

[49] Union's *Opposition to Motion to Dismiss . . .*, ex. G.

[50] The State has since cancelled the PCG contract, but has apparently carried the agreed-upon language forward to new contracts. State's *Response to October 21 Court Order*, p. 8 (Nov. 4, 2019).

[51] *See, e.g., Lever Bros. Co. v. Int'l Chem. Workers Union, Local* 217, 554 F.2d 115, 119–20 (4th Cir. 1976) (upholding a preliminary injunction that prevented an employer from completing a future action while arbitration was pending).

contract to privatize API, that would present a different situation. As it stands now, the Union does not seek to prevent any irreversible action by the State. Instead, the Union appears to seek the Court's ongoing oversight of the State's performance under the CBA. This the Court cannot legally do. The Union's evolving request for injunctive relief, the new allegations in the Union's latest filing,[52] and the changes that have undoubtedly occurred while the Court considered the pending motions all demonstrate the impossibility of continuous court oversight of the parties' adherence with the CBA, particularly where arbitration is required. In such a situation, the Court must enforce the parties' agreement to go to arbitration, rather than issue a mandatory injunction and thereby assume ongoing oversight of the parties' performance.

Accordingly, the Court denies the Union's request for injunctive relief. The Union's request does not meet the requirements of a preliminary or a reverse *Boys Markets* injunction, particularly because it would alter, not maintain, the status quo. The Court recognizes, of course, that evolving circumstances may allow or call for future requests for injunctive relief. This ruling is without prejudice to such future requests.

C. Constitutional Claim

The Union states two final claims, which do not arise under the parties' CBA. The first of these is a claim that the State violated the contract clause of the Alaska Constitution, particularly by failing to fund API.[53] Despite the State's efforts to equate this claim with the Union's claims under the CBA, it is a standalone claim. The claim fails, however, given that the Union does not allege any operable change in state law.

The Alaska Constitution prohibits the State from passing any "law impairing the obligation of contracts."[54] The first question courts ask in analyzing a claim under this clause is "whether the change in state law has operated as a substantial impairment of a

[52] Union's *Response to the State of Alaska's Response to . . . Court Order*, p. 6, 9 (Nov. 8, 2019) (alleging union work is being performed by non-union members and bias in the selection of the feasibility study contractor).
[53] *Compl.* p. 25.
[54] Alaska Const. art. I, § 15.

contractual relationship."[55] Thus, any contract clause claim must be predicated on a change in state law. The Union acknowledges as much in its *Complaint*.[56]

Even so, the Union fails to identify a change in state law that could impair the parties' contractual relationship under the CBA. The State's actions, while allegedly in breach of the CBA, do not constitute laws that impair the CBA. The only law relating to the CBA that the Union identifies is the State's FY 2020 budget.[57] The Union suggests that the State's inadequate funding for API impairs the CBA.[58] As a general matter, it is not clear that state appropriations can violate the contract clause.[59] Regardless, the Court's review of the CBA reveals that it is explicitly "subject to" state appropriations.[60] In fact, the CBA describes a process for the parties to respond to inadequate funding.[61] Any allegation that a party failed to follow this process would be a claim under the CBA. Thus, a claim relating to state appropriations would have to go to arbitration, and inadequate appropriations cannot impair the CBA, because it is subject to such appropriations.[62]

In the absence of any change in state law that is not already accounted for by the CBA, the Union fails to state a claim under the contract clause of the Alaska Constitution. The Court dismisses this claim with prejudice. To the extent the Union seeks a preliminary injunction related to this claim, that request is denied, in light of the Court's dismissal.

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[55] *Hageland Aviation Servs., Inc. v. Harms*, 210 P.3d 444, 451 (Alaska 2009) (*citing Simpson v. Murkowski*, 129 P.3d 435, 444 (Alaska 2006)).

[56] *Compl.*, p. 25 (stating the contract clause applies to "a law that impairs the obligation of contracts").

[57] *Id.*, p. 18.

[58] Union's *Response to the State of Alaska's Response to . . . Court Order*, p. 7.

[59] *See Simpson*, 129 P.3d at 444 (not reaching the question of whether inadequate funding could violate the contract clause).

[60] CBA Art. 40A (*citing* AS 23.40.215(a) ("The monetary terms of any agreement entered into under AS 23.40.070 - 23.40.260 are subject to funding through legislative appropriation.")).

[61] *Id.*

[62] *See ConocoPhillips Alaska, Inc. v. State, Dep't of Nat. Res.*, 109 P.3d 914, 921 n.25 (Alaska 2005).

D. Declaratory Judgment Claim

Finally, the Union seeks a declaration that the State violated Alaska's procurement code, specifically AS 36.30.300, when it contracted with Wellpath.[63] The State argues that the Union lacks standing to bring such a claim, because the Union has not exhausted the administrative process required by the procurement code. Without commenting on the strength of the Union's claim, the Court concludes that the Union has standing to seek declaratory judgment, despite the existence of this administrative process.

Under Alaska's declaratory judgment law, an "interested party" may seek a declaration that an opposing party has violated the law, whether or not the interested party could seek further relief.[64] Courts may only issue declaratory judgment in cases of actual controversy, so the interested party must have standing to sue.[65] Standing is interpreted broadly in Alaska, and there are two primary types: interest-injury standing and citizen-taxpayer standing.[66] In order to establish the latter, a party must raise an issue of public significance and the party must be appropriate in several respects.[67]

The State argues the Union lacks any type of standing because the Union has not completed the administrative process required of those who wish to challenge the State's award of a contract.[68] Under this process, an interested party, defined by the procurement code as someone who is "an actual or prospective bidder or offeror,"[69] may challenge a contract by filing a protest.[70] Depending on the results of that protest, the interested party may then file an agency appeal, and, ultimately, a judicial appeal.[71] By law, this process "provide[s] the exclusive procedure for asserting a claim against an agency arising in

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[63] *Compl.*, p. 20–21; AS 36.30.300(a) (providing that the State may only use single-source procurement when it is impracticable to use other methods, including competitive sealed bidding, competitive sealed proposals, or limited competition, and when it is in the State's best interests).

[64] AS 22.11.020(g).

[65] *State v. Am. Civil Liberties Union of Alaska*, 204 P.3d 364, 368 (Alaska 2009).

[66] *Trustees for Alaska v. State*, 736 P.2d 324, 327 (Alaska 1987).

[67] *Id.* at 329.

[68] *See Gunderson v. Univ. of Alaska, Fairbanks*, 902 P.2d 323, 324 (Alaska 1995).

[69] AS 36.30.699.

[70] AS 36.30.560.

[71] AS 36.30.560 *et seq.*.

relation to a procurement . . . ."[72] Accordingly, failure to follow this process could be grounds for dismissal, because a "party cannot avoid statutorily or judicially imposed exhaustion requirements merely by framing a grievance as a 'declaratory judgment' action."[73]

Here, the Union has not completed the procurement code's administrative process. The Union stated at oral argument that it is not an interested party under the procurement code. The Union also admits in its briefing that it is not a bidder or offeror and, therefore, may not pursue the administrative process.[74] The Union's inability to complete the administrative process would appear to preclude the Union's claim.

However, the Court finds that the Union has standing to seek a declaration that the State violated the procurement code. The Union may not be an interested party for the purposes of the procurement code, but it is an interested party for the purposes of declaratory judgment. The Union, therefore, has standing, considering the Union's claim is for declaratory judgment, rather than for damages or other relief under the procurement code.[75]

In reaching this conclusion, the Court relies in particular on *Ruckle v. Anchorage School District*.[76] In that case, a bidder originally sued the school district over its award of a school bus contract.[77] After that suit was converted to an administrative appeal, a secretary for the bidder's law firm filed a separate suit against the school district and the State, seeking declaratory and injunctive relief, partially in response to the alleged violations of the procurement code, AS 36.30.[78] The Alaska Supreme Court concluded that this plaintiff lacked citizen-taxpayer standing, because the actual bidder had already

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[72] AS 36.30.690; *J & S Servs., Inc. v. Tomter*, 139 P.3d 544, 547 (Alaska 2006) ("The 'exclusive procedure' adopted by the code permits only one narrow administrative channel for obtaining relief and allows only a single, limited remedy: The code requires offerors to seek administrative review . . . .").

[73] *Standard Alaska Prod. Co. v. State Dep't of Revenue*, 773 P.2d 201, 205 (Alaska 1989).

[74] Union's *Opposition to Motion to Dismiss . . .*, p. 17 (stating the Union "is not asserting its claim because it is a bidder or an offeror").

[75] *See* AS 36.30.585.

[76] 85 P.3d 1030 (Alaska 2004).

[77] *Id.* at 3032.

[78] *Id.* at 1032–33.

sued and, therefore, was a more appropriate plaintiff.[79] In so doing, the Supreme Court did not at all consider whether the plaintiff had completed the administrative process under the procurement code.[80] Presumably, the plaintiff was unable to do so; she was a private citizen and a taxpayer, whose children attended school in the district, but she was not a bidder or offeror on the school bus contract.[81] Nevertheless, the Supreme Court proceeded to consider whether she had standing to seek declaratory judgment, reiterating that "all that is required of a complaint seeking declaratory relief is a simple statement of facts demonstrating that the superior court has jurisdiction and that an actual justiciable case or controversy is presented."[82]

Like the plaintiff in *Ruckle*, the Union can seek declaratory judgment related to the procurement code, despite the Union's inability to complete the procurement code's administrative process.[83] Unlike the plaintiff in *Ruckle*, however, the Union actually has standing to assert such a claim. There is no evidence that any prospective bidder or offeror has challenged or intends to challenge the State's contract with Wellpath. Moreover, the Union meets all the requirements for citizen-taxpayer standing. Based on their briefing, both parties would likely concede that the State's management of API is a matter of public concern. The Union is also an appropriate plaintiff, because it represents employees who are directly affected by the State's management of API. Indeed, the Alaska Supreme Court has noted that all taxpaying citizens could "have standing to challenge the results of public bidding systems,"[84] and the Union may be able to establish other types of standing as well.

Accordingly, based primarily on the lack of other parties challenging the State's contract with Wellpath, the Union has standing to assert its claim for declaratory

[79] *Id.* at 1037.

[80] *Id.* at 1034 ("At issue in this case is whether Ruckle has standing to pursue her claims against ASD and the state.").

[81] *Id.* at 1032.

[82] *Id.* at 1034 (*quoting Jefferson v. Asplund*, 458 P.2d 995, 999 (Alaska 1969)).

[83] The Court notes that the Union's inability to complete the administrative process may exempt it from the requirement to complete this process. *J & S Servs., Inc.*, 139 P.3d at 547–48 (implicitly limiting the exclusive remedy provision to bidders and offerors).

[84] *Ruckle*, 85 P.3d at 1035.

judgment. The State's motion to dismiss this claim is denied. Although this claim survives the State's motion, the Court does not grant any injunctive relief related to this claim, because it does not appear as though any part of the Union's request for injunctive relief is particularly related to this claim. Additionally, the Court retains discretion to decline declaratory judgment for a number of reasons that may prove applicable after further litigation of this claim.[85]

III. Conclusion

For the foregoing reasons, the Court grants in part and denies in part the State's motion to dismiss and denies the Union's request for injunctive relief. The Union's declaratory relief claim remains, although the Union may refile its claims under the CBA and its request for injunctive relief after arbitration or if circumstances change. While this case remains open, the Union may also move to enforce the agreement it reached with the State during the course of this litigation. However, in order to do so, the Union must clearly state and put on evidence of the terms of such agreement, along with evidence of any action or inaction by the State that constitutes a violation of such agreement.

DATED at Anchorage, Alaska this 27th day of January, 2020.

JENNIFER S. HENDERSON
Superior Court Judge

I certify that on 1/27/20
a copy of the above was mailed to: M. Brown; M. Simonian; S. Bookman; J. Pickett

Secretary/Deputy Clerk

[85] *See Kanuk ex rel. Kanuk v. State, Dep't of Nat. Res.*, 335 P.3d 1088, 1101, 1103 (Alaska 2014).