

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF:)

BOARD OF REGENTS, STATE OF IOWA,)
Petitioner,)

and)

SERVICE EMPLOYEES INTERNATIONAL)
UNION, LOCAL 199,)
Intervenor.)

CASE NO. 102239

RULING AND ORDER

This matter comes before the Public Employment Relations Board (PERB or Board) upon the Board of Regents, State of Iowa's (State) petition for a declaratory order filed on September 10, 2018. Subsequently, the Service Employee International Union, Local 199 (SEIU) filed a motion for intervention. Pursuant to PERB rule 621-10.5(17A,20), the Board granted what we treated as SEIU's petition for intervention.

The petition poses a question concerning PERB's conduct of an Iowa Code section 20.15(2) retention and recertification election of SEIU as the exclusive representative for a bargaining unit of State employees.¹ The State proposes alternative answers and sets out a summary of reasons for each in its petition. SEIU sets forth its position and arguments in its petition. Both parties waived oral argument.

¹ All references are to Iowa Code (2017).

Iowa Code section 17A.9(2) requires agencies to adopt rules providing for the form, contents, and filing of petitions for declaratory orders, and for their prompt disposition. Accordingly, PERB adopted chapter 10 of its rules, which govern declaratory order proceedings before this agency. PERB rule 621—10(17A,20) specifies that such petitions contain, inter alia, a clear and concise statement of the specific facts upon which the Board is to base the declaratory order.

Relevant Facts.

The State's petition consequently sets out a number of facts, which may be summarized as follows:

SEIU has been the employee organization certified by PERB to represent a bargaining unit of employees who work for the State at the University of Iowa Hospitals and Clinics (UIHC). SEIU was first certified by PERB in Case No. 7349. On behalf of the unit, SEIU and the State have since been parties to successive collective bargaining agreements (CBA).

In late 2016 and early 2017, the parties were negotiating a new CBA for an effective date of July 1, 2017 to June 30, 2019. In the midst of their negotiations, 2017 Iowa Acts, House File 291 was enacted. House File 291 made substantial amendments to Iowa Code chapter 20 that were effective upon enactment on February 17, 2017. Pursuant to the legislation, parties who had not completed their negotiations for new contracts were required to start their negotiations anew under amended

chapter 20. At that time, the State and SEIU disagreed whether they had completed negotiations for a successive agreement. The State asserted that it had not reached an agreement with SEIU and therefore the parties were required to start negotiations anew for the CBA effective July 1, 2017. SEIU argued the parties had reached an agreement before February 17, 2017.

Thereafter, SEIU filed an action in Polk County District Court seeking to enforce what it asserted was a new CBA reached by the parties. The district court determined the parties did not have an executed successive agreement and granted the State's motion for summary judgment and denied SEIU's motion for summary judgment. SEIU appealed the court's rulings to the Iowa Supreme Court where the case is presently pending.

PERB has not made an independent determination of whether the parties had negotiated and executed a collective bargaining agreement. The State has provided continued benefits for the bargaining unit employees from the expiration of the last CBA on June 30, 2017, to the present.²

The Relevant Statutory Language and Administrative Rules.

Iowa Code section 20.15(2)(a) provides in part,

² In its petition for intervention, SEIU disputes the State's description or assertion of these continued benefits as contained in paragraph 2(h) of the State's petition. We draw no inferences nor reach any conclusions on paragraph 2(h) because the extent and characterization of the benefits are irrelevant to our ruling.

20.15 Elections — agreements with the state.

. . . .

2. Retention and recertification elections.

a. The board shall conduct an election to retain and recertify the bargaining representative of a bargaining unit prior to the expiration of the bargaining unit's collective bargaining agreement.

Iowa Code § 20.15(2).

PERB rule 621—5.6(20) addresses “Retention and recertification elections.” The relevant PERB subrule 621—5.6(1)(a) in effect as of August 10, 2017, provided in part,

The agency shall conduct an election[] prior to the expiration of a collective bargaining agreement between an employer and a certified employee organization.

Iowa Admin. Code r. 621—5.6(1)(a).

For clarification, PERB amended subrule 621—5.6(1) effective September 5, 2018. The provision regarding a collective bargaining agreement was amended to provide in part,

When an employer and certified employee organization are parties to a collective bargaining agreement, the agency shall conduct an election, prior to the expiration of a collective bargaining agreement between an employer and a certified employee organization.

Iowa Admin. Code r. 621—5.6(1)(a). Also, additional language was added in subrule 621—5.6(1)(f) to provide,

The agency shall not conduct an election if the employer and certified employee organization are not parties to a collective bargaining agreement.

Iowa Admin. Code r. 621—5.6(1)(f).

The State's Petition.

As the 2018 retention and recertification election period began, UIHC supervisors and administrators started receiving questions from members of the bargaining unit regarding the status of SEIU's certification and why they have not received any notices regarding an election. For guidance, the State filed its petition seeking a declaratory order from PERB.

Question Posed:

[W]hether[] PERB will conduct a retention and recertification election for the SEIU bargaining unit or alternatively, whether PERB will not hold a retention and recertification election for the unit.

For its answer, the State proposes both alternatives and a summary of reasons to support each. In support of PERB conducting the election, the State asserts that the House File 291 legislative changes show an implicit expectation and intention for State public employees to have the opportunity to vote to retain and recertify their certified employee organization every two years. The State further maintains that "the existence of a contract appears to be presumed in House File 291." Alternatively, the State proposes that PERB does not conduct the election. The State asserts there has been a legal determination that the parties do not have a current CBA. Because retention and recertification elections are contingent on the existence of a collective agreement and there is not one in this instance, the State reasons that an election is therefore not required in this case.

SEIU argues that we should decline to issue a declaratory order because the question has been resolved by administrative rule. Alternatively, SEIU maintains PERB should not conduct a retention and recertification election of SEIU as the exclusive bargaining representative for this unit of UIHC employees. SEIU argues Iowa Code section 20.15(2) is unambiguous that a collective bargaining agreement must exist to trigger the requirement of a retention and recertification election of an employee organization.

Should a Declaratory Order be Issued?

Pursuant to Iowa Code chapter 17A, PERB has jurisdiction to issue declaratory orders. “Any person may petition an agency for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the agency.” Iowa Code § 17A.9(1)(a). However, Iowa Code section 17A.9 also provides that the Board may refuse or decline to issue a declaratory order when a petition has been filed. Iowa Code § 17A.9(1) and (2). Accordingly, PERB’s administrative rules contemplate our refusal to issue a declaratory order in certain circumstances. PERB subrule 621–10.9(1) sets forth grounds upon which the Board may refuse to issue an order. The enumerated grounds are as follow:

621–10.9(17A,20) Refusal to issue order.

10.9(1) The board shall not issue a declaratory order where prohibited by 1998 Iowa Acts, chapter 1022, section 13(1), and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

a. The petition does not substantially comply with rule 621–10.2(20).

b. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the board’s failure to issue a declaratory order.

c. The board does not have jurisdiction over the questions presented in the petition.

d. The questions presented by the petition are also presented in a current rule-making, contested case or other agency or judicial proceeding that may definitively resolve them.

e. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.

f. The facts or questions presented in the petition are unclear, overbroad, insufficient or otherwise inappropriate as a basis upon which to issue a declaratory order.

g. There is no need to issue a declaratory order because the questions raised in the petition have been settled due to a change in circumstances.

h. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge an agency decision already made.

i. The petition requests a declaratory order that would necessarily determine the legal rights, duties or responsibilities of persons or entities who have not joined in the petition, intervened separately or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of the petitioner.

j. The petitioner requests the board to determine whether a statute is unconstitutional on its face.

Iowa Admin. Code r. 621–10.9.

SEIU urges that we decline to issue a declaratory order pursuant to PERB subrule 621–10.9(1)(d) because the question presented had been recently resolved in the rule-making process when PERB provided clarity to parties by its amendments to subrule 621–5.6(1). We agree the recent amendments to PERB subrule 621–5.6(1) unequivocally state the

requirement that a CBA must exist to trigger a retention and recertification election. Moreover, the amendments were made to provide greater clarity for the parties and to resolve questions such as the one posed by the petition. However, in this case, the question apparently was not resolved because the petition was filed after the effective date of the amendments on September 5.

Nonetheless, other grounds for refusing to issue a declaratory order are present. First, PERB subrule 621–10.9(1)(f) provides that the Board may refuse to issue an order where “[t]he facts or questions presented in the petition are unclear, overbroad, insufficient or otherwise inappropriate as a basis to issue a declaratory order.” This reason is fully applicable here when the petition only indicates that PERB has not filed a notice of intent to conduct a retention and recertification election of SEIU, but does not specify other facts relevant to the ongoing retention and recertification election process currently conducted by PERB.

The petition does not contain sufficient facts to establish PERB’s election communications to all parties and the extent of petitioner’s knowledge regarding PERB’s plan to conduct or not conduct a retention and recertification election of SEIU as representative of this UIHC unit. Absent from the petition are relevant facts that reveal, on August 27, 2018, PERB issued notices of intent to conduct retention and recertification elections of all other certified employee organizations that represent bargaining units of State employees. PERB had effectively

made its decisions on what retention and recertification elections were required by statute when it issued those notices.

Second, PERB subrule 621–10.9(1)(h) also contemplates our refusal to issue a declaratory order where

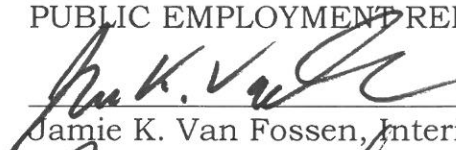
[t]he petition is not based upon facts calculated to aid in planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge an agency decision already made.

This ground is fully applicable in this case. On August 27, PERB issued notices for all the State retention and recertification elections it planned to conduct. As of the State's filing of its petition on September 10, we had made our decision that PERB will not conduct a retention and recertification election of SEIU as the exclusive bargaining representative for the UIHC unit. Therefore, the State's petition is not based upon facts calculated to aid in planning of future conduct. For this reason and the other ground stated, we thus decline to issue a declaratory order as requested.

IT IS THEREFORE ORDERED that the Board of Regents, State of Iowa's petition is DISMISSED.

DATED at Des Moines, Iowa this 11th day of October, 2018.

PUBLIC EMPLOYMENT RELATIONS BOARD



Jamie K. Van Fossen, Interim Chair



Mary T. Gannon, Board Member

Original filed EDMS.