

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

CHAUFFEURS, TEAMSTERS & HELPERS,
LOCAL UNION #238,
Complainant,

and

MUSCATINE COUNTY,
Respondent.

CASE NO. 102379

PROPOSED DECISION AND ORDER

The Complainant, Chauffeurs, Teamsters & Helpers, Local Union # 238 (Teamsters or Union), filed a prohibited practice complaint with the Public Employment Relations Board (PERB or Board) pursuant to Iowa Code section 20.11 and PERB rule 621—3.1(20). The Union contends the Respondent, Muscatine County, committed prohibited practices within the meaning of Iowa Code sections 20.10(2)(a) and 20.10(2)(c) when, on September 27, 2019, the Chief Deputy questioned two union members about a union vote that occurred the previous evening. The County denies its commission of prohibited practices.

The undersigned administrative law judge (ALJ) held an evidentiary hearing in Muscatine County on January 30, 2020. Attorney Jill Hartley represented the Teamsters and attorney Ann Smisek represented the County. Both parties filed post-hearing briefs, the last of which was filed on March 16, 2020.

Based upon the entirety of the record, as well as the parties' arguments, I conclude the Teamsters established the County's commission of prohibited practices.

FINDINGS OF FACT

The facts underlying the parties' controversy are largely undisputed. Muscatine County is a public employer within the meaning of Iowa Code section 20.3(10) and the Teamsters is a certified employee organization within the meaning of Iowa Code section 20.3(4). PERB has certified the Teamsters as the exclusive bargaining representative for certain employees of the Muscatine County Sheriff's Department. The bargaining unit is currently described as including and excluding the following positions:

INCLUDED: All regular full time and all regular part time deputies employed by Muscatine County Sheriff Department[.]

EXCLUDED: Sheriff, confidential employees, all elected employees and others excluded by the Act[.]¹

The Sheriff, C.J. Ryan, leads the department followed in command by the Chief Deputy, Ardyth Slight. Below the chief deputy are two captains, one in charge of investigations and one in charge of patrol, followed by two sergeants. The rest of the deputies are beneath this leadership. The sergeants, captains, chief deputy, and sheriff are considered supervisory positions, which are not included in the bargaining unit.

In September 2019, the deputies became concerned about how Sheriff Ryan was running the department and about a recent statement the Sheriff had made to the public. The deputies felt Sheriff Ryan had failed to address their concerns. For this reason, several deputies approached the Union's business

¹ PERB Case No. 6046

agent, Zach Peterson, about holding a vote of no confidence in the Sheriff. At the hearing, Peterson explained that a vote of no confidence was “a public statement coming from the members of the Union saying that they don’t have confidence in their leadership and making that public with the community.”²

After meeting with Peterson, the union stewards contacted the dues paying members of the bargaining unit and informed them there would be a meeting concerning the vote of no confidence. Prior to the meeting, Peterson worked with the deputies to draft a letter of no confidence, which articulated the Union’s concerns about Sheriff Ryan’s leadership. The letter included accusations that the Sheriff displayed favoritism toward certain deputies, that he had retaliated against other deputies, and it accused the Sheriff of making a misleading statement to the public.³

The Union held its meeting on the evening of September 26, 2019, in the Muscatine County Sheriff’s Office. Deputies who could not attend the meeting in person were present by telephone. At the meeting, Peterson read the prepared letter of no confidence to the members. After reading the statement, the members were given ballots to secretly vote in favor of, or against, the release of the letter of no confidence to the press. Those who participated by phone verbally cast their vote. The votes were counted at the meeting and the result was a unanimous vote of “yes” in support of releasing the letter of no confidence. Before concluding the meeting, the Union’s leadership instructed the members to notify

² Transcript at 11.

³ Joint Exhibit A.

the union stewards if anyone from management approached them about the vote of no confidence.

After the meeting, Peterson emailed copies of the letter of no confidence to several local news organizations. At the hearing, Peterson recalled sending copies of the letter to the Muscatine Journal, Quad City Times, KWQD, the Des Moines Register, the Iowa City Press Citizen, the Cedar Rapids Gazette, and two news stations in the Quad Cities. The Union did not send a copy of the letter to the County or Sheriff's Office. When asked why the Union did not send a copy of the letter to the County, Peterson testified:

No confidence votes aren't like a legal mechanism. Like there's not something that's spelled out by statute, or whatever. Really the only power that they have is to get a message out from the representative group to the general public about how they feel about their leadership. So we thought that the public really was kind of the appropriate audience for the letter.⁴

The next morning, September 27, 2019, at approximately 8:00 A.M., Chief Deputy Ardyth Slight learned of the Union's vote of no confidence in Sheriff Ryan when she saw an article about the vote on social media. Slight testified that she felt "blindsided" by the vote, that she believed the vote was "underhanded and not fair," and that she was upset.⁵ Sheriff Ryan was attending a conference in Washington D.C. that day, so when Slight arrived at the Sheriff's Office she called Sheriff Ryan's wife to inform her of the vote.

⁴ Transcript at 15.

⁵ Transcript at 68-69, 72.

After the call, Slight went about her typical work duties until approximately 10:00 A.M., when Slight saw Deputy Kenny Hora in his office. Hora was a member of the Union and had participated in the vote of no confidence the prior evening.

Hora was alone in his office when Slight arrived. Slight stood at the door to his office and she appeared upset. Slight asked Hora if he had participated in the vote of no confidence. Hora, without confirming, responded, "I am a member of the Union." Slight then asked how many deputies were in the Union, to which Hora responded that there were eight members. Slight named seven deputies and Hora confirmed that they were union members. Slight asked him who else was a member and Hora recalled telling her Deputy Matt Madson was the member she was missing. After confirming the number of union members and their names, Slight left Hora's office. Hora testified that this was his first interaction with management concerning his union membership.

At the hearing, Slight acknowledged that she had been upset, that she asked Hora if he was part of the vote, and she said that she might have listed out the dues paying members. However, Slight explained that her questions were an attempt to gain further information about how the vote happened and how many deputies were involved. Specifically, Slight said she had felt blindsided by the vote and that she was trying to determine whether the vote was among all of the deputies in the bargaining unit or just the dues paying members. Slight testified that she has never tried to interfere with, restrain, or coerce anyone in

the exercise of his or her rights.⁶ Based on the circumstances of how Slight learned of the vote, and her demeanor at the hearing, the undersigned finds Slight's testimony concerning her motivation credible.

After Slight left Hora's office, Hora notified Union Steward Mike Channon about his interaction with Slight. Channon connected Hora with the Union's Business Agent, Zach Peterson, who instructed Hora to put the conversation in writing and email it him. Hora complied and, at 5:22 P.M. that evening, sent Peterson an email describing his interaction with Slight. The email described the encounter discussed above, but also included the statement, "[I] believe the only reason they were inquiring was to intimidate my decision or set us up for an action against us."⁷ At the hearing, Hora testified that his concern about retaliation was based on the negative media clips he had seen concerning the vote and because Slight appeared upset during their interaction.⁸

After talking with Hora, Slight returned to her office. That afternoon, Deputy Matthew Madson, a second shift employee, arrived at the Sheriff's Office to begin his shift. Madson was a union member and had participated in the no confidence vote the previous evening by telephone. At approximately 2:00 P.M., Madson went to Slight's office to pick up a box of supplies for his role on the hostage negotiation team. When Madson arrived, Slight confirmed she had the box and the two walked together to the supply room.

⁶ Transcript at 70-73.

⁷ Joint Exhibit B.

⁸ Transcript at 54-55.

Slight and Madson's testimony concerning their interaction in the supply room is generally consistent. In the supply room, Slight retrieved the box of supplies, handed it to Madson, then said, "So you are part of the Union's no confidence vote?" Slight then asked why she was not notified about the vote. Madson explained the vote was only for union members who pay dues. Slight conveyed that she was covered by the Union and said that she should have been notified. Madson responded, "I don't know enough about that aspect of the Union to clarify...I'm kind of a peon." At the hearing, Slight testified that she misspoke when she told Madson she was "covered by the Union." Slight explained she meant to convey her belief that the department was a united group, regardless of bargaining unit status.

Slight then asked Madson how he voted. Madson responded that it was an anonymous union vote and it was confidential. Slight said "Okay," then told Madson she appreciated his work and that she wished more deputies were like him. At that point, the interaction ended and Madson left the supply room and Slight returned to her office.⁹

After the interaction, Madson contacted the union stewards and told them about his conversation with Slight. The stewards asked Madson to put the conversation in writing and email it to them. Later that day, Madson sent the

⁹ Madson testified that shortly after the interaction he heard a door slam and someone yelling. However, Madson acknowledged he had been down the hall from the incident and could not tell who was yelling. Slight denied slamming her door and testified she had no recollection of yelling after their encounter. As Madson was down the hall when the alleged door slam and yelling occurred, I give greater weight to Slight's testimony. Accordingly, the record does not show Slight slammed her door or yelled after leaving the supply room.

stewards an email describing the interaction.¹⁰

On October 11, 2019, the Union filed the instant prohibited practice complaint alleging Chief Deputy Slight's questioning of Deputy Hora and Deputy Madson following the Union's vote of no confidence in Sheriff Ryan violated Iowa Code sections 20.10(2)(a) and 20.10(2)(c).

CONCLUSIONS OF LAW

The Union alleges the County committed prohibited practices within the meaning of Iowa Code sections 20.10(2)(a) and 20.10(2)(c) when, on September 27, 2019, Chief Deputy Slight questioned Deputy Hora and Deputy Madson about their participation in the Union's vote of no confidence in Sheriff Ryan, which occurred the prior evening. The County admits that on September 27, 2019, Chief Deputy Slight had conversations with Deputy Hora and Deputy Madson about the Union's vote of no confidence, but denies her actions violated Iowa Code sections 20.10(2)(a) or 20.10(2)(c). The provisions of section 20.10 relevant to this claim provide:

20.10 Prohibited practices.

2. It shall be a prohibited practice for a public employer or the employers designated representative to:

a. Interfere with, restrain, or coerce public employees in the exercise of rights granted by this chapter.

¹⁰ Joint Exhibit C.

c. Encourage or discourage membership in any employee organization, committee, or association by discrimination in hiring, tenure, or other terms or conditions of employment.

Iowa Code section 20.8(3) is also central to the Union's claims in this case, which provides, in relevant part:

20.8 Public employee rights.

Public employees shall have the right to:

1. Organize, or form, join, or assist any employee organization.

3. Engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection insofar as any such activity is not prohibited by this chapter or any other law of the state.

In prohibited practice proceedings, the complainant bears the burden of establishing each element of the charge. *Serv. Emp. Int'l Union, Local 199 & Broadlawns Med. Ctr.*, 2005 PERB 6894 at 5; *United Elec. Radio & Mach. Workers of Am. Local 886 & Tama Cnty.*, 2005 PERB 6756 at 6-7.

Section 20.10(2)(a) claim

In order to prevail in an unlawful interference, restraint, or coercion case, a complainant must show (1) employees were engaged in activity protected by chapter 20 and, if so, (2) the employer engaged in conduct which tended to interfere with the employees' free exercise of their rights guaranteed by the statute. *See Scott Cnty. Sheriff's Ass'n & Scott Cnty. Brd. of Supervisors*, 1982 ALJ 2162 & 2163 at 6-7; *See also General Drivers & Helpers' Union, Local 421 &*

City of Epworth, 1993 ALJ 4826 at 5.

Iowa Code section 20.8(3) defines protected activity, in part, as the engagement in concerted activities for the purpose of mutual aid or protection. While the statute does not define “concerted activity,” the Supreme Court has established that the term describes activities of employees who have joined together to achieve common goals. *See Nat’l Labor Relations Bd. v. City Disposal Sys. Inc.*, 465 U.S. 822, 829, 104 S. Ct 1505, 1511, 79 L. Ed. 2d 839 (1984).

Although PERB has not addressed this precise issue, the National Labor Relations Board (NLRB) has held that a union’s vote of no confidence in a supervisor constitutes protected union activity. *See Am. Fed’n of Teachers New Mexico, Afl-Cio & Andrew Lotrich & Am. Fed’n of Teachers New Mexico, Afl-Cio & Am. Fed’n of Teachers Joint Employers*, 360 NLRB 438, 443 (2014). Moreover, NLRB case law establishes “that a petition or other conduct by employees which seeks the removal of a supervisor constitutes protected activity, where the supervisor has a direct impact on the employee working conditions.” *Fivecap, Inc. & Gen. Teamsters Union Local No. 406, Int’l Bhd. of Teamsters, Afl-Cio*, 331 NLRB 1165, 1198 (2000) (citing *Korea News, Inc.*, 297 NLRB 537, 539-540 (1990); *Polynesian Hospitality Tours*, 297 NLRB 228 fn. 2 (1989); and *Hoytuck Corp.*, 285 NLRB 904 fn. 3 (1987)).

Iowa’s statute is similar in form and content to section 7 of the National Labor Relations Act. *See Loidana Miller & College Cmty. Sch. Dist.*, 2017 ALJ 100719 at 8. PERB considers federal interpretations of this similar statute persuasive and instructive on the interpretation and application of Iowa law. *See*

State of Iowa v. Iowa Pub. Emp't Relations Bd., 560 N.W.2d 560, 562 (Iowa 1997) (citing *City of Davenport v. Pub. Emp't Relations Bd.*, 264 N.W.2d 307, 313 (Iowa 1978)). In this case, the record shows the vote of no confidence was group action among the Union's dues paying members designed to alert the press about work conditions under Sheriff Ryan. Therefore, because this group action was an effort to improve the deputies' work conditions, I concluded, consistent with NLRB precedent, that the vote of no confidence was protected, concerted activity under Iowa Code section 20.8(3).

Having determined that Deputy Hora and Deputy Madson engaged in protected, concerted activity when they participated in the vote of no confidence, the remaining issue is whether the County violated Iowa Code section 20.10(2)(a) when Chief Deputy Slight questioned Hora and Madson about their participation in the vote.

"[The] interrogation or questioning [of employees] as to union sympathies has been held violative because of its natural tendency to instill fear of discrimination in the minds of employees based on information the employer has obtained." *Am. Fed'n of State, Cnty. & Mun. Emp. (AFSCME) Council 61 & Dallas Cnty. Bd. of Supervisors*, 1984 ALJ 2547 at 18 (citing *NLRB v. West Coast Casket Co.*, 205 F.2d 902, 32 LRRM 2353 (9th Cir. 1953)). In considering section 20.10(2)(a) claims, "It is well settled that the test of interference, restraint or coercion does not turn on the employer's motive or on whether the coercion actually succeeded or failed." *General Drivers & Helpers Union, Local 421 & City of Epworth*, 1993 ALJ 4826 at 5. Rather, the test for determining when an

unlawful interrogation has occurred is whether, under all the circumstances, the alleged interrogation reasonably tends to restrain, coerce, or interfere with the employees' free exercise of rights guaranteed by the statute. *See id.*; *see also AFSCME Iowa Council 61 & City of LeClaire*, 2012 ALJ 8161 at 10; *see also Am. Fed'n of Teachers New Mexico*, 360 NLRB 438, 443 (2014).

In considering the totality of the circumstances surrounding an employer's questioning of an employee about his or her union activity, the NLRB has considered such relevant factors to include:

Whether the interrogated employee was an open or active union supporter, whether proper assurances were given concerning the questioning, the background and timing of the interrogation, the nature of the information sought, the identity of the questioner, and the place and method of the interrogation.

Am. Fed'n of Teachers New Mexico, 360 NLRB 438, 443 (2014).

Although I find credible Slight's testimony that she never intended to interfere with, restrain, or coerce Hora or Madson, the test does not turn on Slight's motives. Rather, the question is whether, under all the circumstances, Slight's questions reasonably tended to interfere with the employees in the exercise of rights guaranteed by the statute. Under the circumstances, for the reasons discussed below, I conclude her questions were coercive.

Concerning Slight's interaction with Deputy Hora, the record shows that prior to the interaction, Hora had never before interacted with management concerning his union membership. This indicates Hora was not an open or active union supporter. Further, when Slight arrived at Hora's office, she was visibly

upset, she asked him if he was part of the vote, then confirmed with him the names of all the union members. Hora did not volunteer this information, Slight's questions concerned the activity of other members, and Slight did not provide Hora an explanation nor provide any assurances concerning the questioning. Finally, based on this interaction, Hora reported to the union stewards his belief that Slight's inquiry was to "intimidate my decision or set us up for an action against us."

Under these circumstances, I conclude Slight's questions tended to be coercive. Slight is a superior officer, she was upset, and she questioned a non-open union member about his and others' involvement in protected union activity without providing an explanation for her questions. Under these circumstances, it was reasonable for Hora to feel intimidated, to fear possible retaliation, and to feel pressured to answer Slight's questions. For these reasons, I conclude Slight's questioning was coercive and a violation of section 20.10(2)(a).

Turning to Slight's interaction with Madson, the record shows that prior to talking with Hora, Slight did not know Madson was a member of the Union. This indicates Madson was not an open or active union supporter. The record shows Slight asked Madson if he was part of the vote, she asked several times why she was not notified about the vote, and then asked Madson how he had voted. Finally, before parting ways, Slight complemented Madson's work and told him she wished more deputies were like him.

Although Slight did not appear upset when she questioned Madson and their interaction concluded amicably, the NLRB has held that a supervisor's

direct questioning of an employee concerning how the employee voted in a union election is coercive and constitutes an unlawful interrogation. *See Fivecap, Inc. & Gen. Teamsters Union Local No. 406, Int'l Bhd. of Teamsters, Afl-Cio*, 331 NLRB 1165, 1204, 1206 (2000); *see also Taylor Chair Co.*, 292 NLRB 658, 660 (1989). The NLRB's precedent is persuasive and applicable.

In this case, Madson was a non-open union member and Slight asked him if he had participated in the vote of no confidence and then directly asked him how he voted. Under these circumstances, it would be reasonable for an employee to feel pressured to answer their supervisor's questions and fear possible retaliation should the employee decline to answer. For these reasons, I conclude Slight's questioning was coercive under the circumstances and a violation of section 20.10(2)(a).

Section 20.10(2)(c) claim

The Union contends Slight's questioning of Deputies Hora and Madson violated Iowa Code section 20.10(2)(c), which prohibits an employer from encouraging or discouraging membership in an employee organization by discrimination in terms and conditions of employment. Unlike claims of independent 20.10(2)(a) violations, most Iowa Code section 20.10(2)(c) claims turn on the issue of employer motivation. *See City of LeClaire*, 2012 ALJ 8161 at 12. Specifically, section 20.10(2)(c) does not prohibit all discrimination in employment, "only if the discrimination is motivated by an anti-union purpose and has the foreseeable effect of either encouraging or discouraging union membership does it violate the statute." *Id.*

As discussed in the Findings of Fact, I find credible Slight's testimony that she did not intend to interfere with, restrain, or coerce deputies Hora and Madson when she questioned them and that her questions were not motivated by anti-union animus. Moreover, the record does not show the County took any retaliatory actions against union members or changed the terms and conditions of employment of any union members. As the record is absent of any evidence the County discriminated against deputies because of their membership in the Union, I conclude the Union has failed to carry its burden of establishing a violation of Iowa Code section 20.10(2)(c).

Based on all of the above, I consequently propose entry of the following:

ORDER


IT IS THEREFORE ORDERED that to remedy its violation of Iowa Code §20.10(2)(a), Muscatine County shall cease and desist from any continuing or future interference with, restraint or coercion of public employees in the exercise of rights granted by the Public Employment Relations Act.

IT IS FURTHER ORDERED that the Muscatine County Sheriff's Office shall post copies of the attached Notice to Employees in its principal office and in places customarily utilized for the posting of notices to employees, for a period of not less than thirty (30) consecutive days.

The costs of reporting and of the agency-requested transcript, in the amount of \$803.50, are assessed against the Respondent, Muscatine County, pursuant to PERB rule 621—3.12(20). A bill of costs will be issued to the Respondent in accordance with PERB subrule 3.12(3).

The proposed decision will become PERB's final decision in accordance with PERB rule 621—9.1 unless, within 20 days of the date below, a party aggrieved by the proposed decision files an appeal to the Board or the Board, on its own motion, determines to review the proposed decision.

DATED at Des Moines, Iowa this 23rd day of July, 2020.


Patrick B. Thomas
Administrative Law Judge

Filed electronically.
Parties served via eFlex.

NOTICE TO EMPLOYEES

Posted Pursuant to a Decision of the Public Employment Relations Board

Teamsters Local 238 filed a prohibited practice complaint with the Public Employment Relations Board (PERB) in PERB Case No. 102379, against Muscatine County.

PERB has determined that Muscatine County committed a prohibited practice within the meaning of Iowa Code section 20.10(2)(a). This section provides:

20.10 Prohibited Practices.

2. It shall be a prohibited practice for a public employer or the employer's designated representative to:

a. Interfere with, restrain, or coerce public employees in the exercise of rights granted by this chapter.

The violation occurred on September 27, 2019, when Chief Deputy Slight questioned two deputies about their participation in the Teamster's vote of no confidence in Sheriff Ryan, which occurred the prior evening. Chief Deputy Slight's questions tended to interfere with, restrain or coerce bargaining unit employees in their right to engage in concerted activity for the purpose of mutual aid and protection as granted by Iowa Code section 20.8.

To remedy the prohibited practice, the County has been ordered to:

- Cease and desist from any further violations and
- Post this notice in a prominent place in the Muscatine County Sheriff's Office accessible to the general public and in conspicuous places customarily used for the posting of information to employees in the affected bargaining unit, for a period of not less than 30 days.

Any questions should be directed to:

Public Employment Relations Board

510 East 12th Street, Suite 1B
Des Moines, Iowa 50319-0203
515/281-4414

Issued: July 23, 2020