

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

CEDAR FALLS FIREFIGHTERS ASSOCIATION LOCAL 1366, Complainant,)	
)	CASE NO. 102414
and)	PROPOSED DECISION AND ORDER
CITY OF CEDAR FALLS, Respondent.)	

Cedar Falls Firefighters Association Local 1366 (“Local 1366” or “Union”) filed the above-captioned prohibited practice complaint with the Public Employment Relations Board (“PERB”) on February 14, 2020, pursuant to Iowa Code section 20.11 and 621 Iowa Administrative Code 3.1. The complaint alleges the Respondent, City of Cedar Falls, committed a prohibited practice within the meaning of sections 20.9, 20.10(1), and 20.10(2)(e). The City of Cedar Falls denies its commission of a prohibited practice.

The undersigned administrative law judge (ALJ) held an evidentiary hearing by video conference on February 23–24, 2021. Scott Dix represented Local 1366. Michael Galloway and Ann Smisek represented the City. Both filed briefs, the last of which was filed on April 16, 2021.

Based upon the entirety of the record as well as the parties’ arguments, I conclude Local 1366 established the City’s commission of a prohibited practice.

FINDINGS OF FACT

The City of Cedar Falls is a public employer as defined in Iowa Code section 20.3(10). Local 1366 is an employee organization as defined by Iowa Code section 20.3(4). PERB certified Local 1366 in 1975 as the exclusive bargaining

representative for the firefighters in the City of Cedar Falls. Subsequently, the unit description has been amended and clarified multiple times. As described in the certification documents, Local 1366 is currently certified to represent the following group of City employees:

INCLUDED: All employees of the City of Cedar Falls employed in the classifications of Firefighter, Lieutenant and Minimum Rental Housing Inspector.

EXCLUDED: Fire Chief, Battalion Chiefs, Captains, Secretary, Paid On-Call Employee Firefighters, Community Firefighters and all others employees excluded by Iowa Code section 20.4.

Scott Dix was the union president of Local 1366 at the relevant times of this complaint. Dix has been a firefighter for the City since 1995 until June 28, 2020.

The City has two other bargaining units, a police bargaining unit and a public works bargaining unit.¹ Both of the other bargaining units are represented by Chauffeurs, Teamsters & Helpers Local 238.

Local 1366 and the City are parties to a collective bargaining agreement (“CBA”) entered into pursuant to Iowa Code chapter 20. The duration of the CBA runs from July 1, 2017, through June 24, 2022. This CBA covers a variety of topics relevant to the instant complaint. At issue in this case is the bargaining unit employees’ use of vacations and the approval process for those vacations. Article 4 of the CBA addresses vacations. The CBA discusses the accumulation of vacation time and the utilization of vacation. The CBA also has some discussion on

¹ The Cedar Falls Municipal Utilities also has a bargaining unit represented by AFSCME Iowa Council 61.

requests, but does not go in depth on that particular subject. The relevant portions state:

§4.3 Vacation Utilization

Vacation time earned will be figured on the basis of the employment year and shall include the total regular straight time the employee has worked for the City. . . . Vacation time shall not be accumulated from year to year, and annually must be used by the end of the employment year following the year in which it was earned, unless the application for vacation has been refused. Splitting of vacation will be permitted for periods of not less than one (1) work day or tour day. A minimum of two (2) shift employees' and /or two (2) day personnel (on the same shift) may be granted vacation time at the same time. Requests for said days off shall be submitted in writing to the department head and approved at least twenty-four (24) hours prior to the day or days to be taken off.

(a) One-half Day Vacation – The parties agree non-shift personnel shall be allowed to utilize their vacation in one-half day increments.

The City of Cedar Falls also has a policy regarding vacation for its employees. Policy 506 is a policy written to govern all employees within the City of Cedar Falls. This policy was issued in 2005 and has been subsequently amended, with the most recent amendment occurring on March 1, 2019. This policy specifically addresses vacation requests. The policy details that employees will request vacations giving a first and second choice and such choice shall be exercised between January 1 and March 30 annually. The policy also states “Vacations shall be limited to one-week increments unless otherwise approved by the Department Director.” The policy further provides: “**Maximum Paid Vacation Periods.** The maximum paid vacation leave an employee can take at any time cannot exceed five (5) times the number of workdays in the employee’s workweek.”

The firefighters in the public safety department of the City would have received a copy of this policy. Notably for purposes of this case, President Dix and

Jack Johnson, a firefighter with the City, both signed acknowledgements that they received the Cedar Falls Personnel Policy Manual, which contained this policy, and they read and understood its contents. President Dix signed this acknowledgement on March 21, 2019, and Johnson signed the acknowledgement on April 5, 2019.

Although Policy 506 was in the employee manual and had existed for over a decade as the applicable vacation policy for City employees, the fire division of the public safety department had been operating using a different vacation policy (“Fire Vacation Policy”). This policy was labelled the “Prime Time Vacation/Holiday Policy” with an original effective date of December 3, 1993 and a revision date of December 26, 2005. The policy does not list an adopted revision date. Although the policy does not list a revision date and there is no formal adoption date on the document, the public safety department director, Director Olson, testified he believed the fire division did follow the document in previous years. The Fire Vacation Policy provided:

Prime vacation time will be from June 1 through May 31. Vacation scheduled during this time must be scheduled according to the vacation list and not extend beyond May 31 of the next year. There will be no limit to the amount of days to be taken on “first choice” as long as the days are consecutive. Floating holiday may not be scheduled as part of “first choice.” During the “second choice,” chosen days must run consecutively. Vacation or floating holidays may be used during this second time through the list.

The policy also stated the vacation list sign-up is determined by seniority, not rank. This document has served as the fire division’s vacation policy since at least 1995. The supervisors in the fire division posted this document with a sign-up sheet every year during the first week of January. The sign-up sheet is removed on March 15.

The Fire Vacation Policy has existed simultaneously with the City's Policy 506 since 2005.

On December 28, 2019, the fire supervisors had a command staff meeting. Director Olson, Chief John Bostwick, as well as the command staff from the fire division, and some members from the police division attended this meeting. No members from Local 1366 were in attendance as the unit does not include command staff.

At this meeting, among other topics, the command staff discussed Policy 506. In this discussion, the command staff were informed that Policy 506 would now apply to the entire public safety department, meaning both the fire division and the police division. Under Policy 506 vacations were limited to one week, but the department management could grant longer periods of consecutive vacation time for special occasions, if justified. However, management noted that employees in the fire division do not have comparable work hours to the employees in other departments. So during the December 28 meeting, the command staff discussed how to apply Policy 506 to the fire division with some degree of consistency with other City employees.

Ultimately, the City decided that when applying Policy 506 to the firefighters, including the firefighters in Local 1366, management would automatically grant two series of vacation without any reason. Two series is six shifts of 24 hours, which amounts to roughly twenty-one days of vacation time. Director Olson stated that Policy 506, as modified for the fire division, does allow for exceptions to the two-series maximum vacation time. He testified that when he or the fire chief

evaluated whether to grant exceptions they would look at staffing levels and pay attention to the employee's need for mandatory training.

Battalion Chief Stensland, who attended the December 28 meeting, stated that prior to this meeting he was unaware that vacation requests would change even though he received the personnel manual containing Policy 506. After the meeting Stensland stated he understood the policy although he did not agree with it. Director Olson testified that he did not believe the supervisors came out of the December 28 meeting with any confusion. Olson stated the City told the fire supervisors to discuss the vacation picks, meaning the enforcement of the modified Policy 506, with Local 1366 members as vacation picks were a few days away at that point.

After the December 28 supervisors' meeting, the minutes of the meeting were typed up, likely by Fire Chief Bostwick. The minutes for the December 28, 2019, meeting was two pages. The second to last bullet point on the second page stated:

- Vacation picks were discussed and the City policy of allowing 2 weeks off. There was discussion regarding this by the Fire Supervisors. This discussion was to find a resolution and compromise with the City policy. This discussion did not yield any ideas or results. The City policy states two weeks which will be defined as two series (3 shift days as one series and 3 shift days on a second series).

The minutes were distributed to Local 1366 bargaining unit employees. It has been the practice for a couple of years to have the non-supervisory fire division employees sign an acknowledgement that they had received a copy of the supervisors' meeting minutes and understood them. Pursuant to that practice, the December 28, 2019, meeting minutes were distributed. Most of the fire division

employees signed that they had received the minutes during the first week of January 2020. At least one signed receipt as of December 31, 2019, and at least one did not sign acknowledgment of receipt of the minutes until January 23, 2020. President Dix signed acknowledgement on January 21, 2020, and Jack Johnson signed acknowledgment on January 23, 2020. Battalion Chief Stensland testified that when distributing the meeting minutes, some of the non-supervisory fire division employees would have asked him about the potential change in vacation.

Despite the December 28, 2019, meeting wherein the command staff was told about the implementation of the modified Policy 506, the fire division command staff posted the Fire Vacation Policy. They posted the policy with a sign-up sheet in the first week of January 2020, as had been done in the past. The sign-up sheet reflects what dates an employee requested for the “first choice” or “prime time” vacation dates as well as how many dates and when the employee made the request. The employees sign up by seniority regardless of the person’s rank. One of the first employees to sign up for his first choice vacation picks was bargaining unit member, Jack Johnson. On January 6, Johnson requested to take nine consecutive vacation days.²

After Johnson signed up, Battalion Chief Stensland wrote a note on the Fire Vacation Policy on January 16, 2020.³ Stensland said he was advised on January 16 by Director Olson that the fire division employees would be limited to two series

² The exhibit at issue reflects Johnson only requested six consecutive days off for his first choice vacation dates. However, testimony indicates Johnson requested nine days originally, and later erased this request and reduced his request to six days in accordance with the modified Policy 506.

³ This note is dated January 16, 2019, but in testimony Battalion Chief Stensland clarified that date was an error and he wrote the note on January 16, 2020.

for vacations. Due to this information Stensland blacked out the clause in the Fire Vacation Policy that read “There will be no limit to the amount of days to be taken on “first choice.” Stensland then handwrote “Director Olson advised me that vacation picks would be limited to two series (6-shift Days) this also includes Holiday picks.” Stensland testified that his note on the Fire Vacation Policy is the first notice the non-supervisory fire division employees had that Policy 506, as modified, would apply to them.

Even after Stensland wrote the note on the Fire Vacation Policy, the non-supervisory firefighters thought the command staff were still trying to come to a working agreement with the City on the issue of vacation utilization. The firefighters continually asked the command staff for updates.

Further confusing the issue of the vacation policy, Stensland signed up for his first choice vacation picks on January 22. Stensland requested approximately 30 days’ vacation time due to his pending retirement.⁴ Stensland’s request clearly did not fit the “two series” limitation.

Due to this confusion, Jack Johnson emailed Stensland on January 28 asking whether his first pick vacation was approved. Johnson’s email indicated his confusion over why his vacation request would not be approved and asked “Can management now limit the number of days I use consecutively on vacation?”

Within the hour, Stensland responded. Stensland said that based on the December command staff meeting, vacation requests were limited to a maximum

⁴ It has been the policy of the City to grant exceptions to the vacation policy for retiring employees who have built up vacation time.

of two series or six shift days per employee unless approved by the department director, which in this case would be the public safety director and fire chief. Stensland did speak to Chief Bostwick and Director Olson before drafting this email. Director Olson also asked Stensland if Johnson could provide a reason for requesting nine days to ascertain whether an exception could be made. Johnson refused to provide an explanation for his vacation request. After this email exchange, Johnson erased three of his requested days so he met the six day maximum limitation.

Under the parties' CBA, there is a grievance process. There are five steps to the grievance process. The first is to provide oral notice to the battalion chief of the shift you are working. The next step is to provide a written grievance to the fire chief. The third step is a written appeal to the administration committee which consists of City Council members. The fourth step of the grievance process is mediation and the fifth step is arbitration.

President Dix, on behalf of Johnson, submitted a written grievance concerning the implementation and application of the vacation policy, to the fire chief on February 3, 2020. This constituted the second step of the grievance process. During the pendency of the grievance, the firefighters decided that when signing up for first choice picks on the vacation sign-up sheet, the employees would limit their requests to six shifts.

Also in this grievance appeal to Chief Bostwick on February 3, Dix, on behalf of Local 1366, requested to bargain over what Local 1366 claimed was a unilateral change in vacations, a mandatory subject of bargaining. Local 1366 alleged the

City made a unilateral change to vacations that negatively affected Local 1366 and the union did not receive notice of a desire to bargain the change. The letter contended the first potential notice of the change occurred from the officers' meeting, but it was unclear. In the letter, Local 1366 claimed the real notice occurred on January 28 when management denied Johnson's nine consecutive vacation day request for his first choice. Local 1366 stated in the letter its intent to provide the City notice of its request to bargain vacations if the City was unwilling to wait until the next CBA to change the vacation policy.

Dix and Johnson received a response from Chief Bostwick on February 8, 2020. Chief Bostwick denied the grievance. He stated that Johnson's request was for nine vacation shift days, which exceeded the new limitation of two series or six working days. Chief Bostwick stated his belief the firefighters were clearly notified of the change as it was in the December 28 meeting minutes and Policy 506 was in the City policy manual.

Dix responded to Chief Bostwick on February 10, 2020. He stated that Chief Bostwick's February 8 response failed to address his request to negotiate. Dix asked to set up a time immediately to negotiate the change if the City was willing to bargain and alternatively, asked why the City refused to negotiate.

President Dix and Local 1366 appealed the Step 2 grievance decision to the Cedar Falls City Council Administrative Committee on February 13, 2020. In the appeal, Dix stated that Chief Bostwick failed to address the request to bargain the issue and informed the Council that Local 1366 intended to file a case with PERB while appealing the grievance decision in Johnson's case. In the grievance appeal,

Dix also stated that Local 1366 was asking the Cedar Falls City Council to allow the past practice of an “unlimited number of days to be taken off on first choice.”

The Administration Committee of the City Council issued its findings, conclusion, and decision on Local 1366’s grievance appeal on March 10, 2020. The City first noted the issue was moot since the firefighter position was eliminated and no vacations by firefighters would be taken. The firefighters were placed on administrative leave on March 3 or 4, 2020, and none returned to the position of firefighter. All firefighters were either laid off or left employment with the City by the end of June 2020. As all firefighters were placed on administrative leave and did not return to employment, no employee in the unit was adversely impacted by the change in the vacation sign-up process.

Nonetheless, the Committee addressed the merits of Local 1366’s grievance. Ultimately, the Committee denied the grievance. Local 1366 did not proceed to mediation or arbitration on the grievance.

Local 1366 filed the instant prohibited practice complaint with PERB on February 14, 2020. In the complaint, Local 1366 alleged that on January 28, 2020, the City of Cedar Falls made a unilateral change to the way Local 1366 members use their vacations. Local 1366 further contended the City failed to respond in a timely fashion to Local 1366’s request to bargain the issue.

CONCLUSIONS OF LAW

1. Jurisdictional Question

Before addressing the merits of the complaint, the City questions whether PERB is the appropriate forum for Local 1366’s argument. The City claims that

Local 1366 filed a grievance through the CBA's grievance process, and that is the appropriate forum. The City contends Local 1366 is merely trying to circumvent the grievance process by filing at PERB.

I disagree with the City's contention. Local 1366 filed the instant complaint with PERB alleging the City acted in violation of the Act. Local 1366 alleges the City acted in violation of the Act when it made changes to the working conditions of the employees, namely the employees' vacations. Such an allegation fits squarely within PERB's adjudicatory role. See Iowa Code §§ 20.1(2)(c), 20.6(4), 20.10, and 20.11.

2. Unilateral Change Argument

In this case, Local 1366 alleges the City of Cedar Falls committed prohibited practices within the meaning of Iowa Code sections 20.9, 20.10(1) and 20.10(2)(e). Iowa Code section 20.9 contains the scope of negotiations for parties to a collective bargaining agreement. The relevant sections of Iowa Code section 20.10 provide:

1. It shall be a prohibited practice for any public employer, public employee, or employee organization to refuse to negotiate in good faith with respect to the scope of negotiations as defined in section 20.9

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

- e. Refuse to negotiate collectively with representatives of certified employee organizations as required in this chapter.

The law is well settled that a party's unilateral change to a mandatory subject of bargaining during the term of the collective bargaining agreement (CBA) without fulfilling its bargaining obligation constitutes a prohibited practice. *Area Educ. Agency 7 Educ. Ass'n and Area Educ. Agency 7*, 91 PERB 4252 at 12; *Des Moines*

Educ. Ass'n and Des Moines Indep. Cmty. Sch. Dist., 1978 PERB 1122 at 4; *UE Local 893/Iowa United Prof'ls and State of Iowa (Dep't of Human Servs.)*, 2019 ALJ 100024 at 8. To prevail on an unlawful change case, a complainant must demonstrate: (1) the employer implemented a change, (2) the change was to a mandatorily negotiable matter, and (3) the employer had not fulfilled its bargaining obligation before making the change. *AFSCME Iowa Council 61 and City of Clinton*, 2018 PERB 100702 at 15; *UE Local 893/Iowa United Prof'ls*, 2019 ALJ 100024 at 8–9.

In prohibited practice proceedings, the complainant bears the burden of establishing each element of the charge. *United Elec., Radio and Mach. Workers of Am., Local 886 and Tama Cty.*, 05 PERB 6756 at 6; *UE Local 893/Iowa United Prof'ls*, 2019 ALJ 100024 at 8–9. Thus, in this case Local 1366 has the burden of establishing the City of Cedar Falls committed a prohibited practice.

The first task in this analysis is to identify the alleged change and the date it was implemented. *City of Clinton*, 2018 PERB 100702 at 16; *UE Local 893/Iowa United Professionals*, 2019 ALJ 100024 at 9. When the change is not readily apparent or the parties are in disagreement, it may be necessary to determine the status quo of policies, procedures, or practices in operation at the approximate time of the change. *City of Clinton*, 2018 PERB 100702 at 16; *UE Local 893/Iowa United Prof'ls*, 2019 ALJ 100024 at 9.

In this case the City made a change to the scheduling and utilization of vacations. Prior to 2020, Local 1366 employees operated under the Fire Vacation Policy and were not limited in the number of consecutive days they could take when requesting and receiving their first choice vacation time. Beginning in 2020, when the City decided to begin enforcing a modified Policy 506 in the public safety

department, the employees in Local 1366 were now limited to requesting and receiving two consecutive series of vacation, *i.e.* six consecutive vacation days. If the employee wished to take a longer vacation than that, the employee needed to request and receive an exception from the policy from either the Fire Chief or the Public Safety Director.

The record demonstrates this change occurred beginning in the new calendar year of 2020. Director Olson testified that at the December 28, 2019, meeting he requested the command staff inform the fire division employees about the change to the vacation picks as those vacation picks were only a few days away.

Local 1366 has demonstrated the City made a substantive change. *See UE Local 893/Iowa United Prof'ls*, 2019 ALJ 100024 at 10 (stating a substantive change gives rise to an employer's bargaining obligation).

The next question is whether the City's change was to a mandatorily negotiable matter pursuant to Iowa Code section 20.9. If the City made a change to a permissive subject of bargaining, the City's bargaining obligation would not arise and such a change does not constitute a prohibited practice. *Area Educ. Agency 7 Educ. Ass'n*, 91 PERB 4252 at 13.

To determine whether a change is to a mandatorily-negotiable matter, PERB asks the same questions and uses the same analysis as when faced with a question of the negotiability status during negotiation disputes. *UE Local 893/Iowa United Prof'ls*, 2019 ALJ 100024 at 11 (citing *Waterloo Educ. Ass'n v. Pub. Emp't Rel. Bd.*, 740 N.W.2d 418, 429 (Iowa 2007) (describing the negotiation dispute analysis as a determination of whether the proposal fits within the scope of specific term or terms listed in Iowa Code section 20.9 and then a determination of whether the proposal

is preempted or inconsistent with any provision of law)). PERB first identifies the predominant characteristic, subject, or scope of the proposal or change by looking at what the proposal would bind an employer to do if adopted. *Id.* at 12. If the predominant characteristic is within the meaning of an Iowa Code section 20.9 mandatory subject and is not illegal, then it is mandatorily negotiable. *Id.*

In this case, both parties clearly recognize this unit is a public safety unit pursuant to Iowa Code section 20.9 and vacations would be a mandatorily negotiable topic. Local 1366 contends the City's change in enforcing a modified Policy 506 instead of the Firefighters Vacation Policy is a change to vacations. The City argues the change is to staffing as Director Olson testified that Policy 506 addresses staffing concerns.

I find the predominant characteristic of the City's change in limiting the automatic approval of the consecutive number of days an employee can take vacation is vacation, not staffing. Past PERB negotiability disputes have found that both the amount of vacation time earned and the scheduling of vacations falls squarely within the mandatory topic of vacations. *State of Iowa and AFSCME Iowa Council 61*, 1991 PERB 4393 and 4394 at 20 (internal citations omitted). The enforcement of the modified Policy 506 that limited the consecutive number of days an employee could take vacation, although it allowed for an exception, clearly concerns the scheduling of vacations and how vacations are utilized. Director Olson's testimony concerning management's cognizance of the staffing levels, while relevant, does not override the predominant characteristic of the City's change.

Local 1366 has demonstrated the City's change was to a mandatorily-negotiable subject.

The last task in the unlawful change analysis is to examine whether the employer fulfilled its bargaining obligation before making the change. The employer's duty to bargain a mandatorily-negotiable subject differs depending on whether the subject is "contained in" the CBA or not. *City of Cedar Rapids and Cedar Rapids Ass'n of Fire Fighters, Local 11, Int'l Ass'n of Fire Fighters*, 1997 PERB 5129 and 5179 at 11; *Des Moines Educ. Ass'n*, 1978 PERB 1122 at 4; *UE Local 893/Iowa United Prof'ls*, 2019 ALJ 100024 at 9

During the life of the CBA, no party has a duty to discuss any proposed modification to any term contained in the CBA. *Cedar Rapids*, 1997 PERB 5129 & 5179 at 11-12. Also, no party can insist on such discussion of a modification. *Cedar Rapids*, 1997 PERB 5129 and 5179 at 11-12. Thus, a midterm modification can only be made after the consent of the opposing party has been given voluntarily. *Area Educ. Agency 7 Educ. Ass'n*, 1991 PERB 4252 at 12; *Cedar Rapids*, 1997 PERB 5129 and 5179 at 11-12.

However, if the modification is not contained in the CBA, neither party may lawfully implement a change in wages or other working conditions during the contract term unless it has first bargained with the other party. *Area Educ. Agency 7 Educ. Ass'n*, 1991 PERB 4252 at 12; *Cedar Rapids*, 1997 PERB 5129 and 5179 at 12. This requires the party proposing the change to give notice of the change to the certified employee representative and, if requested, an opportunity to negotiate the change to impasse. *Area Educ. Agency 7 Educ. Ass'n*, 1991 PERB 4252 at 12; *Cedar Rapids*, 1997 PERB 5129 and 5179 at 11-12; *UE Local 893/Iowa United Prof'ls*, 2019 ALJ 100024 at 9 (finding the change in that case was made to a mandatorily negotiable subject not contained in the CBA). A unilateral change in a mandatory

subject of bargaining without notice or opportunity to bargain constitutes a prohibited practice. *Des Moines Educ. Ass'n*, 1978 PERB 1122 at 4.

The City seems to argue in its brief that as the Firefighter Vacation Policy is a past practice, rather than a term of the CBA, PERB cannot find a change occurred. I find this argument unpersuasive. As cited above, to determine whether a change occurred, PERB does examine the status quo of policies, procedures, or practices. *See City of Clinton*, 2018 PERB 100702 at 16; *UE Local 893/Iowa United Prof'ls*, 2019 ALJ 100024 at 9. Clearly PERB allows past practice to be used to determine whether a change has been made. However, PERB does not incorporate past practices into the contract when determining what bargaining duty is required. *See General Drivers and Helpers Union, Local No. 421 and City of Dubuque*, 1997 HO 5598 at 5–6 (citing *City of Cedar Rapids*, 1997 PERB 5129 and 5179 and *Des Moines Indep. Cmty. Sch. Dist.*, 78 PERB 1122) (stating that although the accumulation of vacation hours was a long-standing practice, it does not receive the same treatment as those mandatorily-negotiable provisions contained in the CBA).

In the instant case, Local 1366 does not dispute the change is not contained in the CBA. Therefore, under PERB's case law, the City of Cedar Falls had the duty to provide notice of the change to the certified employee representative, and if requested, the opportunity to bargain it to impasse. Local 1366 contends the City provided it notice of the change on January 28, 2020, when Jack Johnson's grievance was denied at Step 2. The City, in its brief, did not specify the date or occasion on which it provided notice to the certified employee representative of the change to the vacation policy.

Based on the record, I believe Local 1366 had actual notice of the change to the vacation policy on or around January 16, 2020, when Battalion Chief Stensland wrote a note on the prior policy that the Local 1366 employees would be limited to two consecutive series when signing up for vacations.

In approximately March 2019, the fire fighter employees, including the President of Local 1366, Scott Dix, signed acknowledgement of receipt of City Policy 506. However, at that time, the policy had existed simultaneously with the Fire Vacation Policy for over a decade and it had not been applied to the firefighters. Given the circumstances, merely providing a policy manual that included Policy 506 to employees in Local 1366 does not provide the Union with notice that a change would take place.

On December 28, 2019, the City informed the fire supervisors that Policy 506 would apply to the firefighters. Director Olson claims he told the fire supervisors to inform the non-supervisory staff, *i.e.* the employees represented by Local 1366. It is unclear that this happened. The employees received the minutes from the December 28 meeting. However, those meeting minutes are unclear. When discussing a compromise regarding the application of Policy 506 the minutes provide “This discussion did not yield any ideas or results.” Again, this is not sufficient notice to alert Local 1366 that a change would be occurring. Furthermore, the president of Local 1366 did not acknowledge receipt of these minutes until January 21, 2020.

The first actual knowledge that Local 1366 had of a change to the vacation policy was Battalion Chief Stensland’s January 16 note on the Fire Vacation Policy

alerting the employees of the limitation on requesting more than two consecutive series or six consecutive shift days of vacation. Although the City still had not formally told Local 1366 of the change to the vacation policy, the Union was aware of the change at that time.

Local 1366 contends there was still confusion after January 16 as Stensland requested more than six shift days when he signed up for his vacation picks. Local 1366 argues it understood that Policy 506 was now applicable to its members after Johnson's vacation request was denied.

Whether Local 1366 had knowledge of the City's change to the vacation policy on December 28, January 16, or January 28 is insignificant given the facts in this case. Regardless of the date of notice, the City had already implemented the change to the vacation policy by January 1, 2020. The City implemented the change without providing Local 1366 the opportunity to bargain.

The City in this case failed to provide any formal notice to Local 1366 of the change to the vacation policy. Local 1366 had actual knowledge of the change to the vacation policy only after the City implemented the policy. Further, when Local 1366 requested to bargain the change, even though the City had already implemented such change, the City refused to acknowledge the request.

Local 1366 has demonstrated the City failed to fulfill its bargaining obligation prior to making a unilateral change to the mandatorily negotiable topic of vacations. Local 1366 has shown the City's actions constitute a prohibited practice within the meaning of Iowa Code sections 20.10(1) and 20.10(2)(e) when

it unilaterally implemented a modified version of Policy 506 without fulfilling its bargaining obligation.

Based on all the foregoing, I propose the following:

ORDER

The City of Cedar Falls is ordered to cease and desist from further violations of the Act, and shall immediately post the attached Notice to Employees in places customarily used for the posting of notices to employees for a period of not less than thirty (30) calendar days.

The costs of reporting and of the agency-requested transcript, in the amount of \$609.50, are assessed against the Respondent, City of Cedar Falls, pursuant to Iowa Code section 20.11(3) and PERB rule 621—3.12(20). A bill of costs will be issued to the City of Cedar Falls in accordance with PERB subrule 3.12(3).

The proposed decision and order will become PERB's final agency action on the merits of the complaint pursuant to PERB rule 621—9.1 unless, within 20 days of the date below, a party files an appeal with the Public Employment Relations Board or the Board determines to review the proposed decision on its own merits.

DATED at Des Moines, Iowa this 29th day of June, 2021.

/s/ Amber DeSmet

Administrative Law Judge

Filed electronically.
Parties served via eFlex.

NOTICE TO EMPLOYEES OF THE CITY OF CEDAR FALLS

ISSUED PURSUANT TO A DECISION OF THE IOWA PUBLIC EMPLOYMENT RELATIONS BOARD

The Iowa Public Employment Relations Board (PERB) has determined the City of Cedar Falls, a public employer, committed a prohibited practice within the meaning of Iowa Code section 20.10(1) and 20.10(2)(e).

PERB has ruled the prohibited practice occurred in January 2020 when the City unilaterally implemented a modified version of Policy 506 without first fulfilling its bargaining obligation of providing notice to Cedar Falls Fire Fighters Association Local 1366 and opportunity for Local 1366 to bargain the changes. The modified version of Policy 506 made changes to a mandatorily negotiable matter “vacations.” PERB has concluded these actions by the employer constituted a failure to bargain in good faith and a refusal to bargain.

The sections of the Iowa Public Employment Relations Act, Iowa Code chapter 20, found to have been violated provide:

20.10 Prohibited practices.

1. It shall be a prohibited practice for any public employer, public employee, or employee organization to refuse to negotiate in good faith with respect to the scope of negotiations as defined in section 20.9
2. It shall be a prohibited practice for a public employer or the employer’s designated representative to:
 - e. Refuse to negotiate collectively with representatives of certified employee organizations as required in this chapter.

To remedy the prohibited practice, the Public Employment Relations Board has ordered the City to cease and desist from any further like violations of the law and to post a true copy of this Notice for 30 days in those places customarily used for the posting of information.

Any questions concerning this Notice or the City’s compliance with its provisions may be directed to the Public Employment Relations Board at 515/281-4414.

Issued June 29, 2021.

PUBLIC EMPLOYMENT RELATIONS BOARD
510 EAST 12TH STREET, SUITE 1B
DES MOINES, IA 50319
iaperb@iowa.gov
<https://iowaperb.iowa.gov>