

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

CEDAR FALLS FIREFIGHTERS ASSOCIATION LOCAL 1366, Complainant,)	
)	
and)	CASE NO. 102426
)	
CITY OF CEDAR FALLS, Respondent.)	
)	

DECISION AND ORDER

This case is before the Public Employment Relations Board (PERB or Board) on the City of Cedar Falls’ appeal of a proposed decision and order issued by an administrative law judge (ALJ) following an evidentiary hearing on the Cedar Falls Firefighters Association Local 1366’s (Local 1366 or Union) prohibited practice complaint. The Union filed its complaint alleging the Respondent, the City of Cedar Falls, committed prohibited practices within the meaning of Iowa Code sections 20.10(1), 20.10(2)(a), (c), (d), and (e), by the City’s actions associated with its Public Safety program.

In her proposed decision, with respect to the Union’s engagement of protected activities, the ALJ concluded the Union established the City’s commission of practices prohibited within the meaning of sections 20.10(2)(a), (c), and (d). However, the ALJ concluded the Union failed to establish the City’s commission of unilateral change practices prohibited

within the meaning of section 20.10(1), 20.10(2)(a) and (e). The ALJ's former conclusion is at issue in the City's appeal.

Both parties filed briefs prior to oral arguments. Attorney David Ricksecker for the Union and attorney Michael Galloway for the City presented oral arguments, virtually via Zoom, to the Board.

Pursuant to Iowa Code section 17A.15(3), on appeal from an ALJ's proposed decision, we possess all powers that we would have possessed had we elected, pursuant to PERB rule 621–2.1(20), to preside at the evidentiary hearing in the place of the ALJ. Pursuant to PERB rules 621–11.8(8A,20) and 621–9.5(17A,20), on this appeal, we have utilized the record as submitted to the ALJ.

Based upon our review of this record, as well as the parties' briefs and oral arguments, we adopt the ALJ's findings of fact and we adopt the ALJ's conclusions with additional discussion. We concur with the ALJ and conclude the Union established the City's commission of prohibited practices.

FINDINGS OF FACT

The ALJ's findings of fact, as set forth in the proposed decision and order attached as "Appendix A," are fully supported by the record. The parties do not dispute the factual findings. We adopt them as our own.

CONCLUSIONS OF LAW

We agree with the ALJ's conclusions as set out in Appendix A and adopt them as our own, with the following additional discussion:

At issue on appeal is the Union's allegation and the ALJ's determination that the City adopted Resolution #21,893 with discriminatory intent to retaliate against the Union for it and its members' engagement in protected activity, including activities in which they opposed the public safety officer (PSO) program. The ALJ correctly framed the legal issue as whether the City violated Iowa Code sections 20.10(2)(a), (c), and (d) for the City's alleged interference, discrimination, and retaliation for the Union and its members engaging in protected activity.

Both parties agree the *Wright Line* test is the appropriate test to determine whether the City committed these prohibited practices as alleged. See *Nat'l Labor Rel. Bd. v. Wright Line*, 251 NLRB 1083 (1980) (NLRB developed test that was later *aff'd* in *Nat'l Labor Rel. Bd. v. Transp. Mgmt. Corp.*, 462 393 (1983)). The ALJ reached her determination by applying the test to the facts of record.

Complainant must establish the elements of a prima facie case: (1) the existence of protected activity; (2) knowledge of that activity by the employer; and (3) union animus. See ALJ Proposed Decision at 28. Proof of these elements warrants at least an inference the employees' protected activity was a motivating factor in the adverse personnel action and a violation of the statute has occurred. *Id.* (citing *Pub. Prof'l Maint. Emps. & Black Hawk Cnty.*, 2012 PERB 8216 at App. 16-17). The employer may rebut the prima facie case by showing that prohibited motivations played no part in its actions or by demonstrating that the same personnel action

would have taken place for legitimate reasons regardless of the protected activity. *Id.*

We disagree with the City's first assertion that its actions were not "adverse" to the union members. The City put the members on administrative leave pending layoff and without the members being able to perform the functions of their career and livelihood.

The ALJ was correct in concluding that the Union established a prima facie case under the *Wright Line* test. First, the City does not dispute the Union engaged in protected activity. Second, there is no dispute that the City was aware of the protected activity. Third, the Union demonstrated union animus as the record reflects and as the ALJ analyzed at length: the disparate treatment of bargaining unit members (ALJ Proposed Decision at 31); the City's abrupt change from its past practice in the implementation of the PSO program (*Id.* at 31-32); and the hostility towards the union from certain City council members and the Director (*Id.* at 33-35).

We concur with the ALJ in rejecting the City's proffered legitimate motive for adopting Resolution #21,893 as grounds to rebut the Union's prima facie case. As the ALJ noted, the adoption of the resolution and reasons for it are not at issue. Rather, the issue "is whether the City had a legitimate motive for placing the bargaining unit employees on administrative leave pending layoff as a result of the implementation of the PSO program." *Id.* at 36. We agree with the ALJ that the City's claim to a

legitimate reason is pretextual, as demonstrated by: the failure to have a transition plan before placing the firefighters on administrative leave; the lack of discussion on the amount of savings; the limited discussion on the appropriate staffing levels; the implementation only affected the traditional firefighters of Local 1366; and the abrupt nature of the implementation.

The Union demonstrated a prima facie case under the *Wright Line* test, which warrants an inference the employer's conduct was a motivating factor in the adverse personnel action and a violation of the statute. The City failed to rebut this presumption. Therefore, the Union established the City's commission of prohibited practices within the meaning of Iowa Code sections 20.10(2)(a), (c), and (d). Accordingly, we enter the following:

ORDER

The City and the Union, by their authorized representatives, shall meet within 20-days of the date of this decision and order for the purpose of formulating the precise terms of an appropriate remedy for the violations found to have occurred.

The Board retains jurisdiction of this matter in order to address any remedy-related issues, which might hereafter arise and to specify the precise terms of the remedy if necessary. In order to prevent further delay in the resolution of this matter, in the event the parties fail to reach agreement, the Board will schedule a hearing to receive evidence and arguments on the precise terms of the remedy, within 45 days of the below date. Agency action will not be final until the appropriate remedy is

approved or determined by the Board. The Board retains jurisdiction to enter whatever orders may be necessary or appropriate to address any remedy-related matters, which may hereafter arise.

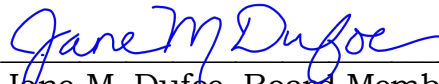
The cost of reporting and of the agency-requested transcript in the amount of \$873.95 are assessed against the City of Cedar Falls pursuant to Iowa Code section 20.11(3) and PERB rule 621—3.12(20). PERB will issue a bill of costs to the City of Cedar Falls in accordance with PERB subrule 3.12(3).

DATED at Des Moines, Iowa, this 20th day of July, 2022.

PUBLIC EMPLOYMENT RELATIONS BOARD



Erik M. Helland, Board Chair



Jane M. Dufoe, Board Member

Original filed EDMS.

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

CEDAR FALLS FIREFIGHTERS ASSOCIATION LOCAL 1366, Complainant,)	
)	
)	CASE NO. 102426
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 April 2, 2020, pursuant to Iowa Code section 20.11 and 621 Iowa Administrative Code Rule 3.1. The complaint alleges the Respondent, City of Cedar Falls, committed a prohibited practice within the meaning of sections 20.8(1)-(4), 20.10(2)(a)-(e), and 20.16(1)(2)(a)-(d). 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 24, 2021. Mark Hedberg and Scott Dix represented Local 1366. Michael Galloway and Ann Smisek represented the City. Both parties filed briefs, the last of which was filed on April 30, 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 during the time relevant to this complaint. Dix was a firefighter for the City from 1995 until June 28, 2020.

The City has two other bargaining units, a police bargaining unit and a public works bargaining unit.¹ Both bargaining units are represented by Chauffeurs, Teamsters & Helpers Local 238 (“Teamsters 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. Some of the provisions relevant to this complaint are as follows:

§6C.1 Layoff

(a) Determination of Layoffs. The City will determine the timing of layoffs, the number of employees to be laid off, and which classifications or grades will be affected. Full-time employees scheduled for lay off may “bump” part-time employees. Laid off full-

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

time employees assuming part-time positions will receive part-time pay and benefits.

(b) Layoff Notice. Employees being scheduled for lay off will be provided with not less than fourteen (14) calendar days notice. Notice will be in writing, and will be delivered to the employee at the work site or placed in the employee's work site mail box.

(c) Notice of Layoff to Union President. Copies of notices sent pursuant to §6C.1(b) will be forwarded to the Union President at the same time employees are notified.

(d) Payment of Benefits at Layoff. The City will endeavor to pay employees being laid off for accrued benefits on the pay day following the pay period during which the employee was laid off. In no case will this time period exceed 30 calendar days.

. . . .

§11.1 In-Service Training.

The City shall provide to employees the training in the areas of Emergency Medical Services and Hazardous Materials Protection that is necessary to maintain certifications to the City's chosen registered response level, and shall provide the job training programs that are necessary for employees to maintain certain certifications as minimum requirements for the applicable job classification. It shall be a condition of employment that each employee actively participate when such programs are conducted during work hours. The City shall be responsible for all costs of such training; however, the City shall not be responsible for the costs of rescheduling or additional training due to employees' negligence or failure to attend. Nothing in this paragraph shall limit the right of the City to determine or to change its registered response level.

The party's CBA also included a grievance procedure, which allowed an employee to file a written appeal of a discipline to an administration committee of the Cedar Falls City Council ("Council or "City Council").

A. Timeline of City's Implementation of Public Safety Officer ("PSO") Program

1. History of Implementation prior to 2020

As a background to the City's action at issue here is the City's movement toward a PSO program. This program has cross-trained PSOs in what would typically be traditional police officer and firefighter roles. While on patrol, a cross-trained PSO can also respond in the event of a fire emergency. PSOs that work patrol carry fire gear in the patrol car and have foam, used in fighting fires, in their patrol cars. The City claims there are a variety of advantages and efficiencies to utilizing a PSO program including potentially more firefighters responding to an emergency call and potential cost savings.

Beginning as early as 1995, when the City began the Reserve Program, the City utilized non-traditional employees to serve in the role of a traditional firefighter and police officer for the City.

As of 1998 or 1999, the fire department's bargaining unit was comprised of approximately 27 firefighters represented by Local 1366 and 11 or 12 fire command staff that were not included in the bargaining unit.

In 2005, Cedar Falls started the Paid on Call ("POC") program. Through this program, the City began cross-training city employees from other departments. These employees could apply for a position at the fire or police division.

In 2009, Teamsters Local 238 amended its unit description with PERB to include not only police officers, but also added the position of "police officer/firefighter." Although the City had not adopted the PSO program at that

time, the PSOs would later be included in Teamster Local 238 bargaining unit as a result of this amendment of unit and certification.

In approximately 2010, the City began visiting with other cities that had implemented a PSO model. Various city employees and council members attended these meetings and it is possible that Local 1366 leadership also attended some of these meetings.

As of 2014, the City officially began the PSO program. Initially, the position of PSO was only offered to current City employees. In 2015, the City and Teamsters Local 238 agreed on the public safety officer job classification and included that position in Teamsters Local 238's contract. The PSO job description stated that a police officer hired after July 1, 2016, would be required to move to a public safety officer position and meet that job classification's requirements upon a date set by the public safety director ("Director").

In 2016, the City started hiring employees as PSOs. The City also created the position of the public safety director to oversee the public safety department. Jeff Olson has served in the role of public safety director at all times relevant to this complaint. Additionally, as of 2016, any new hires in the public safety department were required to be cross-trained. This change was bargained with the Teamsters Local 238 as the PSO position was included under that contract.

Also beginning at least by fiscal year 2016, the City Council began to set long-term planning goals to increase the number of alternative police officers and firefighters. In fiscal year 2016, the City Council stated in its goals a plan to increase the number of City police reservists and volunteer firefighters as well as

part-time firefighters to support full-time staff. These goals also expressed the desire to expand the POC program and other cross-training programs such as the PSO program. In fiscal year 2017, the City Council's goals again stated the plan to increase the number of alternative staff in police and fire and to expand the public safety officer program and the POC program. The Council also stated in these goals the intent to solicit current police officers and firefighters to participate in the POC and PSO programs. From fiscal year 2018 through the present year, the City Council goals stated its intention to expand the PSO program while assessing whether the POC program needed to be expanded. In setting these goals, the City Council did not discuss an intent to lay off or reduce the traditional firefighting staff.

After 2016, the City underwent organizational change in the public safety department. The number of PSOs increased as traditional police officers and firefighters resigned and retired. Those positions were filled with PSOs. Conversely, the number of traditional firefighters began to decrease through attrition. Despite this organizational change, Director Olson answered a public comment during a September 2019 meeting stating the City would always have full-time firefighters and the City had "no intent to lay any firefighters off." Battalion Chiefs Roger Stensland and Curt Hildebrand also claim they never heard discussion about laying off firefighters prior to 2020.

2. 2020 Immediate Implementation of PSO Program

At the February 2020, City Council work session, Director Olson presented an update on the PSO program. He displayed a chart of the public safety model

that did not include traditional firefighters or police officers. Olson stated that at that time the City had 60 police officers, which included 53 PSOs, and seven traditional police officers. The police side of the public safety department also had 11 POC personnel and reserves. Olson also stated the public safety department had 67 firefighters, which included 53 PSOs and 14 traditional full-time firefighters.² The fire side of the department also had four part-time and POC personnel. At this work session Olson stated that Council could decide whether to proceed with full implementation of the PSO model, modify the PSO model, or return to separate police and fire departments. The Councilmembers had various discussions including a conversation on the cost effectiveness of the PSO model, the training of the firefighters, the benefits in staffing under the PSO model, and general analytics of the PSO model. Councilmember Mark Miller called for a special City Council meeting to take place on February 20, 2020. At this meeting the Council requested that Olson return to the Council with options for the full implementation of the PSO model and what the implementation procedure would entail.

On February 20, 2020, the Cedar Falls City Council held a special meeting solely to discuss implementation of the public safety model. As instructed, Director Olson presented options for full implementation of the PSO program. He presented two options. The first option was a status quo option of hiring PSOs as traditional

² Other information in the record demonstrates that as of March 2020 there were only eight full-time firefighters in Local 1366. It appears the discrepancy between the number cited at the meeting and in the record is due to Olson's inclusion of the supervisory positions when discussing the number of traditional firefighters in the department.

police officers and firefighters retired or resigned. His second option required the reorganization of the public safety department. This entailed maintaining the fire supervisory positions and essentially eliminating all employees in the traditional firefighter position. Olson also presented ideas on the transition for the traditional firefighters that would be laid off in the reorganization. During the presentation, Olson did not comment on what would happen to the traditional police officers.³ The reorganization of the public safety department did not include laying off the police officers that were not cross-trained, and did not include laying off non-bargaining unit supervisory police officers or non-bargaining unit supervisory firefighters that were not cross-trained. The supervisory fire positions, including the fire captains and battalion chiefs, were kept in the department. Both Battalion Chiefs Stensland and Hildebrand stated this reorganization option resulted in Local 1366 firefighters' immediate layoffs, but other non cross-trained personnel kept their positions.

At this February 20, 2020, meeting, the City Council took extensive public comment. Three hours into the meeting after the public comment section, Councilmember Miller asked whether implementing the reorganization immediately would be safe and whether the City had adequate staffing. Olson responded the department did have the staffing necessary for the reorganization.

³ A councilmember later raised this question and Olson responded that under the agreement with the police officers, the City could not force a police officer to become a PSO. At the time of the presentation only three police officers in the Teamsters Local 238 bargaining unit were not cross-trained.

Ultimately, the City Council adopted Resolution 21,893, identified as the “RESOLUTION APPROVING IMMEDIATE IMPLEMENTATION OF THE PUBLIC SAFETY PROGRAM INCLUDING REORGANIZATION OF THE PUBLIC SAFETY DEPARTMENT.” The Council adopted this resolution in a 5 to 2 vote, with Darrah, DeBuhr, Kruse, Miller, and Taiber voting “yes,” and Harding and Sires voting “no.”

Immediately following the February 20, 2020, meeting, Fire Chief John Bostwick, the police chief, and Director Olson had a discussion regarding concerns of bad feelings between employees and high emotions because of the outcome of the meeting. Fire Chief Bostwick decided the traditional firefighters would not be allowed in the building as management continued to discuss what the City Council’s adoption of the resolution meant. Only one traditional firefighter was on duty that night and management offered him the chance to leave. Chief Bostwick called Captain Derek Brown, the acting battalion chief, around 10:00 p.m. and relayed the decision that no firefighters were allowed in the building. He asked Captain Brown to notify the other substation as well. Brown understood this action to be a lock-out. When Brown asked about keycard entry to the building, Chief Bostwick said that issue was being addressed. When Chief Bostwick arrived around 10:00 a.m. on February 21, he lifted his directive from the previous night.

On February 21, 2020, Mayor Green vetoed Resolution #21,893 based on his concerns regarding the process. The Mayor’s veto memorandum stated the City Council failed to follow basic principles of good governance in the process of approving the resolution as the special meeting allowed staff less than two working days to prepare the presentation, engage stakeholders, and obtain feedback on the

reorganization and the expected layoffs. In this veto memorandum, the Mayor stated the only reason given for the “emergency” nature of the meeting was the potential outcome of the March 24 special election in which, some council members felt a reorganization of the public safety department would be less assured. Mayor Green emphasized the reason for the veto was not based on the merits of the resolution, but based merely on the process.

On March 2, 2020, the City Council, at a regular meeting, overrode the Mayor’s veto of Resolution #21,893. The Council again heard extensive public comment prior to voting to override the veto. The Council overrode the veto in a 5 to 2 vote, identical to the adoption of the resolution.

Mayor Green, on March 2, issued a memorandum to the City Administrator regarding the creation of a firefighter transition task force. The charge of that task force was to recommend by April 1, 2020, a plan of equitable outcomes for former firefighters displaced as a result of Council’s actions. At this time, the traditional firefighters were placed on administrative leave pending implementation of the task force recommendations.

On March 4, 2020, Dix, the Local 1366 president, directed a memorandum to Fire Chief Bostwick, Director Olson, and City Attorney Kevin Rogers. This memorandum was labelled “Request to Negotiate.” In the memorandum, Dix stated that Local 1366 was formally requesting to negotiate over changes the City said it was going to make to the job of firefighter. He alleged the City’s action of placing all bargaining unit firefighters on administrative leave and replacing them on their shifts with PSOs could not take place without bargaining. Dix also contended the

reason given for the administrative leave was the firefighters were not certified police officers, which Local 1366 contended was a training issue and a mandatory subject of bargaining. He further alleged the situation involved matters of supplemental pay, transfer procedures, and possibly other mandatory topics of bargaining. Dix requested a response by March 6.

On March 6, an attorney, on behalf of the City, issued a response to Dix's request to negotiate. In this letter the City stated there was a committee to look at the transition of firefighters. The City further stated it would follow the collective bargaining agreement regarding staff reduction. Additionally, because severance was not included in the collective bargaining agreement and was a permissive topic, the City did not need to negotiate it. The City contended it was not obligated to negotiate the reorganization of the public safety department.

In March the City approved and adopted the recommendations of the Mayor's Firefighter Transition Task Force. The task force noted the current phase of the reorganization was to lay off the firefighters, retain supervisory personnel, and retain the police officer classification due to CBA constraints. These recommendations stated that Resolution #21,893 required the "immediate elimination of the Firefighter job classification in the City of Cedar Falls." However, as of the time of the task force, the firefighter position had not been eliminated as the firefighters were still on administrative leave in paid status. The task force acknowledged that displaced firefighters were placed on administrative leave with full pay and benefits as of March 3, 2020, and would remain on administrative leave through June 22, 2020. The task force listed options for the displaced

firefighters. These options included the choice to cross-train for the PSO position,⁴ apply for another job with the City, or to take a severance package.⁵

At the time of the passage of Resolution #21,893, Local 1366 had eight firefighters in the unit. Five of the eight firefighters opted to receive the severance package offered by the City. One of the firefighters transitioned to a PSO position. One of the firefighters was promoted to fire captain. The union president, Dix, was laid off.⁶ During this transition period, the traditional firefighters remained on administrative leave in paid status with full benefits until June 2020.⁷

Based on the evidence in the record at the time of hearing, two police officers have not cross-trained. Some supervisory employees in the fire and police division have cross-trained, others have not. The City has continued with its practice of only filling vacancies with cross-trained employees even in supervisory positions. The City claims a cost savings using the PSO model and contends its staffing levels for emergency fire incidents are higher than it would be under a traditional fire department and police department. The City alleges a cost savings of \$1,981,776.59 between a traditional staffing model and the public safety staffing model.⁸

⁴ The task force rewrote the PSO position so several firefighters who had been ineligible to apply would be eligible for the position. The displaced firefighters had to apply for the position by March 23, 2020, with an initial screening process on March 24, 2020 for internal applicants.

⁵ The severance package included a waiver of claims against the City.

⁶ The two part-time firefighters for the City were also laid off.

⁷ There is some testimony the actual layoff took place on June 28, 2020, rather than the June 22 date cited in the task force document.

⁸ It is unclear from the evidence in the record how the City reached this figure. Additionally, the document states that it is a “model savings” so it is unclear whether these savings were realized from the City’s actions in adopting Resolution #21,893 or from the gradual transition of the PSO program.

B. Local 1366's History with the City

The City and Local 1366 had a difficult relationship over the past few years leading up to the 2020 resolution that resulted in the elimination of the traditional firefighter position.

The City and Local 1366 negotiated a collective bargaining agreement (CBA) that began in 2017 and lasts until 2022. There is no indication the City treated Local 1366 any different than any of the other units with which the City negotiated at that time.

In February 2019 the parties discussed beginning a labor-management committee (LMC) with a PERB facilitator. The City claims they hoped to use this opportunity to discuss the differences Local 1366 and the City had concerning the PSO program. Local 1366 President Dix indicated a willingness to meet with the City, but requested the meeting be public. The PERB facilitator indicated that PERB would not be attending the meeting if the meeting/training was public. The LMC never came to fruition.

In the spring of 2019, Dix and another firefighter requested the City conduct an internal investigation about Mayor Brown. Dix claimed Mayor Brown accused him and another firefighter of overtime abuse. The City engaged an outside attorney to investigate the claim.

In June 2019, Local 1366 filed a petition for an injunction and declaratory judgment in Black Hawk County to stop the promotion of the PSO position.

In September 2019, President Dix received communication the City was investigating him for violation of the personnel policy manual due to his treatment

of PSOs. Dix requested information regarding these allegations on September 11, 2019. The City agreed to provide the requested information after Dix signed a waiver. Dix refused to sign the waiver. After an investigation into the complaints of eight city employees against Dix, the City disciplined Dix with a written warning for his mistreatment of and harassing behavior toward PSOs in November 2019. In December 2019, Dix appealed this discipline, pursuant to the grievance procedure in the CBA, to an administrative committee comprised of the City Council. Dix also objected to Mayor Brown sitting on the grievance panel. Dix contended Mayor Brown had a conflict due to Brown's allegations earlier that year about Dix's overtime and sick leave abuse. It does not appear that Brown remained on the panel. The grievance panel considered the appeal on February 5, 2020. On February 11, 2020, the administration committee of the City Council denied the appeal and Dix received a written warning.

Local 1366 claims that in January 2020 the City denied it permission to use its typical meeting space. Local 1366 alleges the City also then investigated Local 1366 because the City had not been notified of Local 1366's use of the meeting space.

On February 14, 2020, Local 1366 filed a prohibited practice complaint against the City. The Local contended the City unilaterally implemented a change to vacations, a mandatory subject of bargaining, and failed to respond in a timely fashion to Local 1366's request to bargain the issue.

The record demonstrates that at least since the fall of 2018 Local 1366 has presented safety concerns to the City and to the public. Battalion Chiefs Stensland

and Hildebrand testified they heard safety concerns from the firefighters and passed that up the chain of command. Stensland and Hildebrand stated that although the City listened, nothing more was done. President Dix presented safety concerns at a City Council meeting in June 2019. He also commented on the Local 1366's apprehension about retaliation for raising those safety concerns. In various City Council meetings, the City Council members alluded to Local 1366's use of social media posts about their safety concerns as well as other concerns about the PSO program.

C. Comments from City Council and City Management Regarding Local 1366 and PSO Program

1. City Council Members' Comments about Local 1366 prior to 2020

During City Council meetings from October 2018 through November 2019, the PSO program, particularly its implementation in the fire division and its effect on the traditional firefighters, garnered much public comment and Council discussion. Regardless of other agenda topics, a significant portion of the public comments were geared toward the PSO program. Generally, Councilmembers or Director Olson responded to the questions and comments. The City Council's discussion after public comment also involved ample discussion of the PSO model and the fire division of the public safety department.

The City Council and Director Olson discussed the cost effectiveness of the PSO model. They also discussed staffing numbers using the PSO model and the ISO rating of the public safety department.⁹ The Council and Director Olson also

⁹ The ISO rates fire departments nation-wide and evaluated the City during its transition to the PSO program.

discussed the training of PSOs. Due largely to public comment, the Council and the Director also discussed specific fires in the community and what occurred at those fires.

However, the Council and the Director also discussed the traditional firefighters' resistance to the PSO model and Local 1366's failure to meet with the City. By October 2018, Director Olson opined that the public safety department was undergoing organizational change and some people could not deal with that change. The Council and the Director discussed the resignation of firefighters during meetings in the fall of 2018. Director Olson commented that he was "irritated by all the negativity" from people who did not understand how the PSO program operates. Although Director Olson did not directly name Local 1366 when making his comments, he impliedly directed this comment at Local 1366 as it followed his statements about Dix and the union's vice president's refusal to meet to discuss their concerns with the PSO program. Director Olson reiterated the City's desire to meet with the firefighters to resolve issues. At a later meeting in October 2018, Director Olson stated that at a training on the PSO model he heard that "unions, you know, are going to outcry safety and grievances and prohibited practices which we are experiencing and even some mistreatment of employees." At a later meeting in 2019, Councilmember Miller stated it is "unfortunate that we have a group of employees that are unwilling to cooperate in this program and it's dividing this community and it is absolutely unfortunate."¹⁰

¹⁰ Although the composition of the Council changed over the years in question, any direct quote from a Council member in this decision will be from a Council member who ultimately voted on Resolution #21,893.

Director Olson and the City Council also discussed social media posts and rumors about the training of PSOs. In November 2018, Olson stated there was “misinformation” out there. In September 2019, Councilmember Miller commented about the rumors and social media posts saying he wished he could respond in public to some of these comments and misinformation. Given the context of the comments and the pattern of the Director and the Council’s comments, it is clear they are at least in part implying these rumors and social media posts are coming from the Local 1366 members.

The Director and the Council also had multiple conversations about Local 1366’s various formal complaints against the City as well as the outcome and the cost of those complaints. The Council and Director Olson discussed that there were roughly 25 instances of the Local 1366 filing a grievance, OSHA complaint, PERB complaint, district court case, or other type of complaint, and those complaints were all unfounded. Generally, the Council and Director Olson cited that these complaints cost taxpayers approximately \$25,000.¹¹

Various Council members and Director Olson also commented on the traditional firefighters’ use of sick leave and overtime. In May 2019, Olson stated the firefighters had used an “enormous amount” of sick leave which generated an enormous amount of overtime, but it was pursuant to CBA language. Director Olson also stated the firefighters used significantly more hours than the police

¹¹ At a different meeting the cited cost is \$50,000, which appears to be a misstatement as in multiple other meetings Director Olson and others cite the cost as approximately \$25,000.

officers. He cited that the firefighters used “4,700 hours of sick leave” in the last nine months.

Various council members and Director Olson also discussed the traditional firefighters’ mistreatment of PSOs, and discussed potential bullying throughout Council meetings in 2019.

2. City Council Members’ Comments in 2020

The City Council had a change in membership and in the mayor position by February 2020. The City had a new mayor who had previously been a councilmember. The Council also had some new members.

Despite the change in some of the participants, the Council and the Director engaged in much of the same discussion that occurred prior to 2020 in the February and March 2020 meetings. The comments made at the February work session, February special meeting, and the March veto override meeting shed some light on the Council’s rationale for adoption of the immediate implementation of the PSO program, which essentially resulted in the administrative leave and layoff of the employees in the traditional firefighter position.

At these meetings the various Council members asked about the City’s meetings with the firefighters to resolve the firefighters’ concern about the PSO program. Director Olson responded that the City had asked the fire for an LMC under PERB rules, but the firefighters would not follow PERB’s rules. Councilmember Miller stated that Director Olson tried to work with the fire union, but the union displays an “absolute unwillingness to work” with the City. When Councilmember Darrah asked about getting the firefighters involved as long as

they would support the PSO model, Director Olson responded that they had tried to reach out but fire leadership chose not to meet under PERB's standards. Director Olson and Councilmember Miller commented that the fire union would not discuss issues with them.

The Council and the Director also discussed the Union's filing of complaints. Councilmember Kruse stated the union had filed 25 grievances in the last few years, so the Council has heard their concerns. Director Olson commented on the number of the union's grievances and complaints filed with various entities. He reiterated that the City had not lost any of these cases.

The Council and the Director also discussed the Union's use of social media to voice their opposition to the PSO program. Councilmember Kruse stated that Council had heard and read the firefighters' concerns on social media. Director Olson also commented at the February work session that when people see the PSO model in action or hear about it rather than simply reading about it on Facebook, they like the PSO program.

Director Olson and various Council members also engaged in discussion about the division between the firefighters' and the PSOs. At the February work session Director Olson talked about the criticism of the PSOs and how they are afraid to ask for help. Councilmember Taiber stated there are two groups that do not get along. He stated they are like oil and water and that he blames one side more than the other. He concluded by saying "We know why this doesn't work." At the February 20 special meeting Councilmember Taiber asked Director Olson about the composition of the shifts in the fire division and whether the PSOs and

traditional firefighters are separated. Director Olson responded that there were three shifts and for the last year the traditional firefighters made up one shift and the PSOs made up two shifts of the fire division of the public safety department. Olson claimed the two groups were separated because of mistreatment. Councilmember Taiber expressed extreme disappointment after asking about whether the fire department was still a “hostile place to work in” and hearing from Director Olson that conditions have not improved. Councilmember Kruse asked how to resolve the “hostile environment.”

Council members also did express some positivity at these meetings in early 2020. Multiple Council members expressed appreciation for the firefighters. In the February special meeting Councilmember Miller stated he appreciated everyone’s service in the City regardless of their position. Councilmember Darrah said he “has nothing but the utmost respect” for the firefighters, but was still convinced the PSOs could handle the job.

However, multiple Council members also discussed the failure of Local 1366 to support the PSO model and expressed disappointment in the Union. At the February work session Councilmember Taiber said few firefighters have chosen to become a PSO and asked whether the firefighters were choosing not to become a PSO because they were fearful of being able to pass a polygraph or other higher standards of testing.

At the February 20 special session in which the Council passed Resolution #21,893, Councilmember Miller said that in order to help the community move on full implementation of the PSO program was necessary. He said that “considering

contention and divisiveness” the City could no longer navigate the PSO program with a soft implementation. Councilmember Miller opined the City had a department where the firefighters were not following Council’s policy. Councilmember Miller further stated, “I understand the optics of what this looks like.” “We don’t have the option of speaking about union issues, so I’ve essentially been biting my tongue for a long while.” Councilmember Miller claimed that although PSO implementation was clearly a “union issue,” an immediate implementation of the PSO program was not “union busting” because if that were the case the City would get rid of every union in the city. Miller claimed the PSOs’ safety was being challenged and “we’ve listened to the antics” and watched the social media stuff. He stated that everybody’s safety was at issue because these two groups cannot work together and then mentioned Dix’s discipline appeal. Councilmember Miller added that it was “unfortunate that situation starts at the top with our union president” and it trickles down from there. Councilmember Miller also stated the PSO model originally was meant to supplement the department, but has morphed because “we’re not getting cooperation, and that is unfortunate.”

Councilmember Taiber commented that Local 1366 tried very little “to come around and back this program” and the internal resistance could not be overstated. He also said there were firefighters willing to work within the PSO model, but when the “brass” of the union does not buy into the program it makes it difficult for others to do so. Councilmember Taiber also commented that he did not need to throw mud by citing issues of overtime use or grievance procedures

that are overused, then added that he cannot say “abused” anymore, and hostilities and harassment in the workplace. Councilmember Taiber commented that the firefighter union was not buying into the PSO program. He opined that “this is a drawback of being in a collective bargaining position, you can’t pick winners and losers.” He concluded his statement by stating he was proud of both groups, but the goal is “organizational effectiveness” and that was not currently happening. Councilmember Darrah also commented there are people in the firefighter group that would work within the PSO model, but there was something in the way and he was not going to say what it is but people would not step up because “it’s not permissible by their union.”

3. Views on the Relationship between the City and Local 1366

The record contains additional perspective on the relationship between the City and Local 1366. Director Olson stated there was far more interest from the police officers than the firefighters to be cross-trained as a PSO. Director Olson also stated the City is not anti-union as both the traditional firefighters and PSOs are in a union, they are just in different unions.

Battalion Chiefs Stensland and Hildebrand both testified that upper management, such as the public safety director and the city administrator, expressed negative feelings toward Local 1366 for filing grievances and social media posts. It is worth noting, however, that neither Battalion Chief Stensland nor Battalion Chief Hildebrand were in favor of the PSO model. Battalion Chief Stensland further testified he felt the City’s actions in laying off the professional firefighters was due to union animus not an actual planned execution of the public

safety model. Stensland opined, as one of the command staff in charge of the fire shifts, that the City was not fully ready to switch to a PSO model in February and March of 2020. Battalion Chief Hildebrand also testified he felt the City's actions were retaliatory and not done as part of a planned execution of the public safety model. He claimed the City had been under political pressure from the union informing the public about the PSO model and the City saw an opportunity in the political atmosphere to remove the firefighters.

Local 1366 President Dix testified his belief the PSO implementation was done in retaliation for certain activities the Union had engaged in over the last several years including their comments on social media about safety issues and clarification of facts, the Union's filing of grievances, prohibited practice complaints, and notification to supervisors about safety issues.

Local 1366 filed the instant prohibited practice complaint on April 2, 2020.

In its complaint, the Union alleged the following:

The Respondent, through its elected representatives and managers, has treated the Complainant and its bargaining unit members unfavorably because of their resistance to the creation of the PSOs which they have every right to do as protected activity under Chapter 20. Furthermore, the Respondent has failed to negotiate with the Complainant on the issue of eliminating the fire fighter positions or replacing it with PSOs.

In addition, the respondent has failed to follow layoff procedures which are mandatory subjects of bargaining and contained in the collective bargaining agreement. This unilateral change of a mandatory topic contained in the collective bargaining agreement violates Section 20.9 and 20.10 of the Public Employment Relations Act.

CONCLUSIONS OF LAW

In this case, Local 1366 alleges the City of Cedar Falls committed prohibited practices presumably within the meanings of Iowa Code section 20.10(2)(a)–(e)¹², which provides:

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.

b. Dominate or interfere in the administration of any employee organization.

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

d. Discharge or discriminate against a public employee because the employee has filed an affidavit, petition, or complaint or given any information or testimony under this chapter, or because the employee has formed, joined, or chosen to be represented by any employee organization.

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

In its petition Local 1366 also cites section Iowa Code sections 20.8(1)–(4) and 20.16 as relevant. These sections provide:

20.8 Public employee rights.

Public employees shall have the right to:

1. Organize, or form, join, or assist any employee organization.
2. Negotiate collectively through representatives of their own choosing.
3. Engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection insofar as any

¹² The petition filed by Local 1366 does not specify precise Code provisions it claims the City violated, but rather lists a set of relevant provisions.

such activity is not prohibited by this chapter or any other law of the state.

4. Refuse to join or participate in the activities of employee organizations, including the payment of any dues, fees or assessments or service fees of any type.

20.16 Duty to bargain.

Upon the receipt by a public employer of a request from an employee organization to bargain on behalf of public employees, the duty to engage in collective bargaining shall arise if the employee organization has been certified by the board as the exclusive bargaining representative for the public employees in that bargaining unit.”

Although the hearing and record contain ample discussion and debate on the merits of the PSO program in theory and in implementation in the City, that is not the issue before me. Rather, the issue is whether the City committed a violation of chapter 20 when it placed eight firefighters on administrative leave pending layoff as a result of Resolution #23,893.

In its complaint, Local 1366 argues the City treated the Union unfavorably. The Union alleges the City adopted Resolution #23,893 with discriminatory intent to retaliate against Local 1366 for their engagement in protected activities, including activities in which they opposed the implementation of the PSO program. Local 1366 also claims the City failed to negotiate with the Union on the issue of eliminating the firefighter position or replacing it with PSOs. Finally, Local 1366 argues the City failed to follow layoff procedures which is a mandatory subject of bargaining. In its brief, Local 1366 also alleges the City made unilateral changes to the topics of job classification and in-service training while failing to bargain those topics. The City maintains that it did not commit a prohibited practice, and the layoff of the firefighters occurred as a result of a multi-year, long-term project

to implement a program of cross-trained fire and police employees. The City claims it did not retaliate against the Union, but was merely at a logical point to implement the public safety model. The City also claims the transition to utilizing the PSO position rather than the firefighter position was unrelated to union activity and would have occurred regardless of the union's protected activity. The City also argues that it did not fail to negotiate on any mandatory subject of bargaining and it followed the appropriate CBA provisions in its execution of the layoff procedure.

In prohibited practice proceedings, the complainant bears the burden of establishing each element of the charge. *United Elec., Radio and Mach. Workers of America, Local 886 and Tama Cty.*, 05 PERB 6756 at 6. Thus, in this case Local 1366 has the burden of establishing the City of Cedar Falls committed a prohibited practice.

A. Interference, Encouragement or Discouragement of Union Membership, and Retaliation Claim

In its complaint, Local 1366 did not explicitly state which particular statutes it claims the City violated. However, based on the complaint, subsequent hearing, and the brief, it is clear the Union is alleging the City violated Iowa Code section 20.10(2)(a),(c), and (d) for the City's alleged

interference, discrimination, and retaliation against Local 1366 and its bargaining unit members for engaging in protected activity.¹³

Both parties in this case acknowledge the *Wright Line* test is the appropriate test to determine whether the City violated Iowa Code sections 20.10(2)(a), (c), or (d). In analyzing cases of alleged employment discrimination motivated by a desire to encourage or discourage union membership or to retaliate for employees having engaged in protected activities when the employer alleges a legitimate motive for its action, PERB and Iowa courts apply the dual motive test from *National Labor Relations Board v. Wright Line. Pub. Prof'l & Maint. Emps., Local 2003 and Black Hawk Cty.* 2012 PERB 8216, at App. 15–16; *United Elec., Radio and Mach. Workers of America, Local 1145 and W. Iowa Tech Cmty. Coll.*, 2008 PERB 7252 at 14; *AFSCME Iowa Council 61 and State of Iowa (Bd. of Regents)*, 2004 PERB 6673 at 16; *Pub. Prof'l and Maint. Emps., Local 2003 and Black Hawk Cty.*, 2004 PERB 6664 at 14-15; *Pub., Prof'l & Maint. Emps., Local 2003 and Ida Cty.*, 95 PERB 5037 at 8. See *Cerro Gordo Cty. v. Pub. Emp't Relations Bd.*, 395 N.W.2d 672, 676 (Iowa Ct. App. 1986). The National Labor Relations Board adopted this approach in *National Labor Relations Board v. Wright Line*, 251 NLRB 1083, 105 LRRM 1169 (1980), and it was later upheld by the United States Supreme Court in *National Labor Relations Board v.*

¹³ To the extent Local 1366 is claiming a violation of Iowa Code section 20.10(2)(b), I do not find the allegation compelling as the Union has offered no real argument for finding the City has violated this paragraph. See *Public Professional and Maintenance Employees, Local 2003 and Black Hawk County*, 2012 PERB 8216 at App. 14–16 (finding the Complainant seemed to no longer be raising the argument, but the evidence also did not establish the employer's domination of the organization, meaning the union was controlled or directed by the employer rather than the employees, or the employer's interference with the union meaning the employer exercised some lesser form of influence in the determination of union policy).

Transportation Management Corporation, 462 U.S. 393, 113 LRRM 2857 (1983).
W. Iowa Tech Cmty. Coll., 2008 PERB 7252, at 14; *AFSCME Iowa Council 61 and State of Iowa (Board of Regents)*, 2004 PERB 6673 at 16; *Ida Cty.*, 95 PERB 5037 at 8.

Under the *Wright Line* dual motive test, the employees or union must establish a prima facie case showing sufficient evidence to support an inference that protected activity was the “motivating factor” in the employer’s decision. *Ida Cty.*, 95 PERB 5037 at 8 (quotations and citations omitted). If the complainant establishes the prima facie case, the burden then shifts to the employer to demonstrate, by a preponderance of the evidence, the same action would have taken place even in the absence of the protected conduct. *Id.*; *Serv. Emps. Int’l Union Local 150 and Dubuque Cmty. Sch. Dist.*, 2000 H.O. 5895 & 5994 at 14–15 (quoting *Cerro Gordo Cty.*, 395 N.W.2d at 676). The shifting burden essentially requires the employer to make an affirmative defense. *Dubuque Cmty. Sch. Dist.*, 2000 H.O. 5895 & 5994 at 14–15 (quoting *Cerro Gordo Cty.*, 395 N.W.2d at 676).

When utilizing the *Wright Line* analysis, the initial focus is on the elements of the prima facie case. The Complainant must demonstrate: (1) the existence of protected activity, (2) knowledge of that activity by the employer, and (3) union animus. Proof of these elements warrants at least an inference the employer’s conduct was a motivating factor in the adverse personnel action and a violation of the statute has occurred. *Black Hawk Cty.*, 2012 PERB 8216, at App. 16–17; *W. Iowa Tech Cmty. Coll.*, 2008 7252 at 15; *AFSCME/Iowa Council 61 and State*, 2004 PERB 6673 at 17.

The employer may rebut the prima facie case by showing that prohibited motivations played no part in its actions. *Black Hawk Cty.*, 2012 PERB 8216, at App. 16–17; *W. Iowa Tech Cmty. Coll.*, 2008 7252 at 15. If the employer cannot rebut the prima facie case, the employer must demonstrate the same personnel action would have taken place for legitimate reasons regardless of the protected activity. *Black Hawk Cty.*, 2012 PERB 8216, at App. 16–17; *W. Iowa Tech Cmty. Coll.*, 2008 7252 at 15.

Local 1366 alleges its bargaining unit members engaged in a variety of protected activity in the years prior to the City Council’s adoption of Resolution #21,893 in February and March 2020. The Union engaged in protected activity when filing grievances pursuant to the collective bargaining agreement, filing prohibited practice complaints, filing other complaints against the City or City employees, filing a request for an injunction and declaratory ruling in district court, taking safety concerns to fire command staff, refusing to meet with the City to discuss the public safety program except in public, and posting concerns about the PSO program on various social media platforms. The City does not dispute these activities are protected. The City also does not dispute that it had knowledge of the Union’s protected activities. That fact is supported by the evidence in the record.

The crux of the dispute between the Union and the City is whether there was union animus to support an inference the City acted with a discriminatory or retaliatory motive when adopting Resolution #21,893, which resulted in the

Local 1366 traditional firefighters being placed on administrative leave, pending layoff.

To determine the employer's motive, PERB has long held it can rely on circumstantial or direct evidence. *Black Hawk Cty.*, 2012 PERB 8216 at App. 17. The existence of union animus to satisfy the complainant's prima facie case can be inferred from factors such as the employer's expressed hostility toward unionization combined with knowledge of the union's activities, inconsistencies in proffered reasons for the adverse personnel action, disparate treatment of similarly situated employees, deviation from past practice by employer in implementing the adverse employment action, and proximity in time between union activities and the adverse employment action. *Id.*; *AFSCME/Iowa Council 61 and State of Iowa*, 2004 PERB 6673 at 17-18; *Ida Cty.*, 95 PERB 5037 at 9; *AFSCME/Iowa Council 61 and State of Iowa*, 2013 ALJ 8465 at 9 (internal citations omitted). This final analysis of the prima facie case, the employer's motive or the presence or absence of union animus, is a question of fact. *Black Hawk Cty.*, 2012 PERB 8216 at App. 17; *W. Iowa Tech Cmty. Coll.*, 2008 PERB 7252 at 16.

Based on the above factors listed, the Union established union animus as demonstrated by the disparate treatment of similarly situated employees, the employer's deviation from past practice in the implementation of the PSO program, and the City Council and the Director's hostility towards the union.

In the instant case, the City Council adopted a resolution for the immediate implementation of the PSO program. This resolution resulted in the

Local 1366 firefighters being placed on administrative leave pending layoff. At the time of the adoption of this resolution, the City Council and the Director were aware it was only going to affect the non-command staff firefighters, or Local 1366 bargaining unit members. The immediate implementation of the resolution would not affect any firefighters in the command staff regardless of whether those employees were cross-trained. Likewise, it would not affect any police officers regardless of whether they were cross-trained. The immediate implementation of the PSO program affected the non-command staff traditional firefighters, meaning the Local 1366 bargaining unit employees. This disparate treatment is evidence of union animus. *Compare Ida Cty.*, 95 PERB 5037 at 9–10 (finding convincing evidence of the employer’s improper motivation in reducing hours for bargaining unit employees after bargaining sessions when all bargaining unit members were affected by the reduction in hours and only the bargaining unit members were affected by the reduction in hours); *with W. Iowa Tech Cmty. Coll.*, 2008 PERB 7252 at 5–8, 18–19 (finding a lack of discriminatory motive in subcontracting of custodial positions when there was disparate treatment of the bargaining unit members, but the disparate treatment was valid based on the history of the discussion and relationship between the parties, other groups were affected but in a different manner, and the College presented overwhelming evidence of serious economic concerns).

Local 1366 further demonstrated union animus due to the City’s deviation from past practice. The City presented evidence that it had been gradually moving toward implementation of the PSO program. This gradual transition

included replacing non-cross-trained employees with cross trained PSOs upon a traditional firefighter's retirement or resignation. Less than six months before the City Council's adoption of the resolution, the Director declared the City had no intent to lay off the traditional firefighters. The City abruptly changed course in February and March of 2020. There is no evidence in the record that explains the City's abrupt change in its approach to the implementation of the PSO program. The record is devoid of evidence of any change in staffing or the economics of the City to justify this departure from the gradual implementation of the PSO program. This abrupt change in the City's approach to implementation of the PSO program tends to demonstrate it was due to the City's animus towards the Union rather than a planned transition to the PSO program.

Finally, Local 1366 claims the Council and the Director exhibited hostility toward the Union. The City argues that no union animus exists, but rather the City and Local 1366 merely disagreed about the value of the PSO program. Based on my review of the record, namely the hours of video-recorded City Council meetings, Local 1366 has demonstrated with overwhelming evidence the Council and the Director exhibited hostility toward the union, union leadership, and the protected activities in which the Union engaged over the course of the years leading up to the adoption of Resolution #21,893.

The City and the Union had a strained relationship. The City was gradually implementing the PSO program and the Union disagreed with that decision. Simply having a difficult relationship would not rise to the level of a showing of union animus. *See Pub., Prof'l & Maint. Emps., Local 2003 and Lewis Cent. Cmty.*

Sch. Dist., 1992 H.O. 4755 at 18 (finding frequent disputes between the union and the District regarding interpretation or application of the collective bargaining agreements or the rights of the District versus the rights of the union were not indicative of union animus). However, in this case the disagreements rose beyond that of a strained relationship over the City's implementation of the PSO program.

Certain members of the Cedar Falls City Council expressed disappointment in the Union, its leadership, and the employees for their failure to endorse the PSO program. However, the comments went far beyond mere disappointment over the disagreement between management and the employees. Certain City Council members as well as the Director expressed hostility towards the union in general, the union's leadership, and the union's engagement in protected activities. These comments by the leadership in the City demonstrate a nexus between Local 1366's protected activity and the City's action in adopting Resolution #21,893. *See Nichols Aluminum LLC v. Nat'l Labor Relations Bd.*, 797 F.3d 548, 554–55 (8th Cir. 2015) (Melloy, concurring) (stating the requirement of a nexus between the union activity, the union animus, and the adverse employment action).

Two of the command staff in the Cedar Falls Fire Department testified they believed the City's hostility toward the union led to the layoff of the firefighters. The evidence in the record, namely the City Council meetings, supports their testimony. The evidence of the City Council's hostility toward the union is abundant and plentiful throughout City Council meetings.

The comments made by City Council members as well as the Director during the February 2020 and March 2020 meetings when discussing and voting on Resolution #21,893 are particularly significant. During those meetings, City Council members negatively discussed Local 1366's social media campaigns about the PSO program, grievances and other unsuccessful complaints filed by Local 1366, and the union leadership's failure to meet to discuss the PSO program. At the February 20, 2020, meeting one Council member said the immediate implementation of the PSO program in regards to the firefighters was a "union issue," but then said the City's actions did not constitute "union busting" as it was only dismantling Local 1366, not the other public unions in existence in the City. In the March meeting overriding the Mayor's veto on Resolution #21,893, another Councilmember blamed union leadership for the firefighters' resistance to the PSO program. He went on to comment on the Union's overuse of overtime and grievance procedures. Another Councilmember at that same March meeting stated that certain firefighters could work within the PSO model, but "it's not permissible by their union."

The comments by certain City Council members and the Director as provided above, in the facts, and in the record generally, demonstrate the City's hostility toward the union, the union leadership, and the union's engagement in protected activities. The comments were made by the Director presenting the implementation plan to the City, as well as the Council members voting on such resolution. See *Nat'l Labor Relations Bd. v. RELCO Locomotives, Inc.*, 734 F.3d 764, 781 (8th Cir. 2013) (stating it is reasonable to assume high-level managers

speak on behalf of the company when they express anti-union animus). The statements of the City Council members and the Director were not limited to a factual statement of disagreement between the parties, or a factual statement about the union's activity. Based on the context of these statements, I find the statements are evidence of hostility towards the union and evidence of a retaliatory motive when adopting Resolution #21,893. *But see Black Hawk Cty.*, 2004 PERB 6664 at 20 (finding based on the context of the comments by certain members of the Board of Supervisors were not evidence of hostility or a retaliatory motive).

Local 1366 further argues the timing of the City's resolution indicates an inference of union animus. I do not find the timing to be especially probative in the instant case. Local 1366 claims the City has engaged in a history of retaliatory actions after the Union's engagement in protected activity. The City's past actions are not at issue in this case.

The Union has demonstrated the existence of union animus. The City's disparate treatment of the bargaining unit members, the City's abrupt change from its past practice in the implementation of the PSO program, as well as the hostility toward the union from certain City Council members and the Director demonstrate union animus.

Based on the above, Local 1366 has met its burden in establishing a prima facie case. The Union has demonstrated its employees engaged in protected activity, and the City was aware of the protected activity. The Union has further

demonstrated an inference the City acted with a discriminatory motive and in retaliation for the culmination of the Union's protected activity.

To rebut the prima facie case, the City claims it had a legitimate motive in adopting Resolution #21,893. Specifically, the City alleges its actions in adopting this resolution were the result of a multi-year project to implement a PSO model for greater cost savings and to provide additional staff to respond to fire emergencies. The City contends it had reached the point where staffing levels allowed the immediate implementation realized through the adoption of Resolution #21,893. I do not find the City's argument persuasive.

The City's argument fails to recognize the issue in this case. The issue is not whether the City had a legitimate motive to implement the PSO program. The issue is whether the City had a legitimate motive to place the bargaining unit employees on administrative leave pending layoff as a result of its implementation of the PSO program. As mentioned above, the City's claim the PSO model is effective and advantageous is not at issue in this decision.

The facts of the case demonstrate the City's claim to a legitimate motive is pretextual. *See, e.g., Ida Cty.*, 95 PERB 5037 at 13 (finding the County's claim of an economic concern unsupported where only bargaining unit members were affected); *Pub. Prof'l and Maint. Emps. and Marshall Cty.*, 86 PERB 3058 & 3085 at 23-24 (finding the County's economics argument pretextual as layoffs were primarily in retaliation of employees exercising their rights).

The City's immediate implementation of the PSO program and reorganization of the public safety department only affected Local 1366. Other

members of the public safety department including police officers and the fire command staff were not cross-trained, and yet, those employees were not included in the reorganization and layoff plans. The City claims this disparate treatment is due to the CBA between the City and the police officers as well as the need to keep the fire command staff to train future PSOs. However, the disparate treatment belies the City's claim to economic savings and staffing increases when it was not requiring other employees to cross-train.

Additionally, as late as September 2019, the Director stated the City had no intention to lay off the traditional firefighters. If the implementation of the PSO program was a planned multi-year project, the layoff of employees who had not cross-trained should not have been a surprise. Yet, the record reflects the immediate implementation of the PSO program that resulted in the pending layoff of the firefighters was an abrupt departure from the City's planned, gradual implementation of the PSO program.

Finally, as previously discussed, the statements of the City Council members do not support a finding that the Council was motivated solely by legitimate reasons in adopting the resolution. The City Council members discussed the training of PSOs, the staffing levels of the public safety department, and potential cost savings at earlier meetings. However, the statements made by various Council members and the Director demonstrate the motivation for their support of the resolution was not based on those analytics. It is unclear what, if any cost savings or increased staffing the City experienced

due to its layoff of the traditional firefighter position in 2020 versus a gradual transition to the public safety program as had been the City's status quo.

The City's actions in failing to have a transition plan prior to placing the traditional firefighters on administrative leave, the lack of discussion on the amount of savings for the department, the limited discussion on the appropriate staffing levels, the fact the immediate implementation only affected the traditional firefighters in Local 1366, and the abrupt nature of the resolution demonstrate the City's actions were not truly motivated by the legitimate purpose of executing a planned transition to the PSO program.

The City had been gradually implementing the PSO program prior to the City's adoption of the resolution in February and March 2020. The adoption of the resolution only changed one thing. The resolution led to the administrative leave and pending layoff of the traditional firefighters, the bargaining unit members in Local 1366. Based on the facts in the record, I cannot find the City has established by a preponderance of the evidence that it had a legitimate motive in adopting Resolution #21,893 and placing the firefighters on administrative leave pending layoff.

The City also asserts the affirmative defense that regardless of the union's actions and the alleged animus, the City would have implemented the PSO program. The City again fails to recognize the issue. The issue is not whether the City was going to implement the PSO program. The issue is whether the City would have placed the eight firefighters on administrative leave pending their layoff. Again, the City has not shown by a preponderance of the evidence with

the evidence in the record that it would have removed the firefighters from duty pending their layoff absent union animus.

The City may be correct in stating the PSO program would be fully implemented at some point in the future. However, the abrupt and selective nature of the implementation of the PSO program in this case shows the City would not have implemented the PSO program in this way absent union animus due to the union's protected activity. *See Ida Cty.*, 95 PERB 5037 at 9–11 (finding the record as a whole supports the finding the abrupt and wholesale reduction of hours of the bargaining unit employees would not have taken place when it did in absence of the City's retaliation against the union's actions and positions during bargaining sessions). The City's actions, based on the evidence in the record were discriminatory and retaliatory. The City's actions were the result of its union animus stemming from the culmination of the Union's protected activity.

The City has failed to show it acted with a legitimate purpose in implementing the public safety program. The City has further failed to demonstrate its action of placing the traditional firefighters from Local 1366 on administrative leave pending layoff would have taken place absent the Union's protected activity.

Ultimately, Local 1366 demonstrated an inference the City's actions were retaliatory and discriminatory toward the Union due to the Union's protected activity. The City has failed to rebut that argument. Local 1366 has

demonstrated the City committed a prohibited practice within the meaning of Iowa Code section 20.10(2)(a), (c), and (d).

B. Unilateral Change Claim.

Local 1366 also argues the City implemented a unilateral change and failed to bargain the change pursuant to Iowa Code chapter 20. In the complaint, Local 1366 stated the City failed to negotiate “on the issue of eliminating the fire fighter positions or replacing it with PSOs.” The Union goes on to add the City “failed to follow layoff procedures which are mandatory subjects of bargaining and contained in the collective bargaining agreement. This unilateral change of a mandatory topic contained in the collective bargaining agreement violates Section 20.9 and 20.10 of the Public Employment Relations Act.”

The parties did not present opening or closing statements at hearing. In its brief, Local 1366 now appears to allege the City implemented a unilateral change to the mandatory topics of in-service training, job classification, and layoff procedures. Although difficult to ascertain based on the vague and disjointed theories alleged in the complaint, the Union appears to have altered its unilateral change theory. In its brief the Union no longer asserted the unilateral change theory regarding layoff procedures, but instead claimed the City implemented unilateral changes to in-service training and job classification.

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:

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

(e) Refuse to negotiate collectively with representatives of certified employee organizations as required by this chapter.

To prevail on an unlawful change case the complainant must show: (1) the employer implemented a change, (2) the change was to a mandatorily negotiable matter, and (3) the employer did not fulfill its bargaining obligation before making the change. *AFSCME Iowa Council 61 and City of Clinton*, 2018 PERB 100702 at 15. The first task is to identify the alleged change and the date it was implemented. *Id.* at 16. 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. *Id.* This status quo determination assists in ascertaining if there was a change or identifying what changed and when it took place. *Id.*

1. Unilateral Change to In-Service Training

The Union asserts a unilateral change to the mandatory subject of bargaining of "in-service training." See Iowa Code section 20.9(1). The Union contends the City failed to offer to bargain with the firefighters about the in-service training necessary to cross-train and retain their positions.

The Union's contention fails to assert the employer implemented a change to the in-service training requirements for a firefighter. The CBA states the City "shall provide the job training programs that are necessary for employees to maintain certain certifications as minimum requirements for the applicable job

classification.” Nothing in the record demonstrates the firefighters’ job training programs were in any way deficient for their classification as firefighters.

As no change has been made to the in-service training requirements for the classification of firefighter, the Union has failed to establish the City’s commission of a prohibited practice on this basis.

2. Unilateral Change to Job Classification

The Union also asserts the City implemented a unilateral change to the mandatory subject of “job classification.” The Union asserts the City eliminated the firefighter job position and created the position of PSO, which is a change to the mandatory subject of job classification.

Again, the Union has failed to demonstrate the threshold issue of the unilateral change, that a change occurred. The Union equates the City’s action in placing the firefighters on administrative leave pending layoff as the elimination of the firefighter job classification. Upon a review of the record, I cannot find the potential layoff of employees in the position of firefighter to be synonymous with the elimination of the firefighter job classification.

The task force report states the Resolution resulted in the immediate elimination of the job classification of firefighter. However, in practice this did not occur. As of the time of the authoring of that report, employees in that job classification were on administrative leave in full paid status. Based on the record, no employee remained in the job classification of firefighter as of June 2020.

At the time of the hearing, no employee remained in the firefighter position. The City's PSO program implementation and policy since 2016 demonstrates its intention not to fill the position. However, there is nothing in the record to definitively show the firefighter job classification no longer exists in the City of Cedar Falls. Rather the firefighter job classification may exist and the position will have an extended and perhaps permanent vacancy. Without additional evidence in the record, I cannot find the City actually eliminated the job classification of firefighter. Therefore, I cannot find the City made a unilateral change to a mandatory subject of bargaining.

Even assuming the Union established the job classification of firefighter was eliminated, I still do not find the City committed a prohibited practice on the basis alleged in the Union's brief. PERB has stated:

[The term job classification] relates to the arrangement of jobs into categories, based on selected factors, for the primary purpose of establishing wage or salary rates. It does not relate to the assignment of employees, notification of those assignments, or the qualifications for employment (although those qualifications, i.e. "training, experience, or skill," may be the basis for the categorical arrangement of jobs.) Nor does it include job content (the functions, requirements, and duties of a given job) or job description (a written record summarizing the main features of characteristics of a job, including description of duties, responsibilities, promotional opportunities, general working conditions, qualifications, materials handled, etc.).

Des Moines Ass'n of Prof'l Firefighters, Local N. 4 v. Pub. Emp't Relations Bd., No. 15-0456, 2016 WL 541071 at *4 (Iowa Ct. App. Feb. 10, 2016) (unpublished) (citing *Bettendorf Cmty. Sch. Dist.*, 76 PERB 598). In that decision, the Iowa Court of Appeals agreed with PERB that the change at issue did not alter the status

quo concerning job classifications as no job classification was eliminated or altered, and no new job classification was created. *Id.*

Local 1366 appears to be arguing the City was eliminating the job of firefighter and reclassifying it as a PSO. This interpretation of the facts is not supported by the record. The City created the PSO job classification years before the City's resolution that resulted in the layoff of the bargaining unit firefighters. The City bargained the creation of this new job classification with Teamsters Local 238 as the job classification was included in its bargaining unit. Local 1366's attempts at this stage to bargain any alleged alteration or reclassification or elimination of the firefighter job classification appears to be an attempt to go back in time to undo a change to a job classification that took place four years prior to its complaint. To the extent the Union is arguing a change in job classification due to the transition from firefighters to PSOs, this argument is untimely. See Iowa Code section 20.11 (requiring prohibited practice complaint to be filed within 90 days of the alleged violation).

Local 1366 has not demonstrated the City's commission of a prohibited practice on the basis of a unilateral change to the mandatory subject of job classification.

3. Unilateral Change in Layoff Procedures.

Finally, Local 1366, in its original complaint, asserted the City made a unilateral change to the mandatory topic of layoffs, most likely meaning "procedures for staff reduction." Again, the Union has failed to demonstrate the City implemented a change.

The City did engage in staff reduction when placing the firefighters on administrative leave that led to layoff. The City's unilateral implementation of layoff procedures was permitted and addressed in the parties' CBA. Nothing in the record demonstrates the City deviated from the CBA procedure. As such, the Union has not shown the City implemented a change in its staff reduction procedures. *See W. Iowa Tech Cmty. Coll.*, 2008 PERB 7252 at 13 (finding nothing in the CBA between the parties' prohibited the College from unilaterally deciding to reduce staff and subcontract work and the College followed staff reduction procedures in CBA so the unilateral change claim was without merit). Local 1366 has not demonstrated the City's commission of a prohibited practice on the basis of a unilateral change to the mandatory subject of staff reduction procedures.

Local 1366 established the City committed a prohibited practice within the meaning of Iowa Code section 20.10(2)(a), (c), and (d). However, Local 1366 did not demonstrate the City's commission of a prohibited practice within the meaning of Iowa Code section 20.10(1) and 20.10(2)(a) and (e) on its unilateral change arguments. Based on all the foregoing, I propose the following:

ORDER

The City and the Union, by their authorized representatives, shall meet within 20 days of the date this proposed decision and order becomes final for the purpose of formulating the precise terms of an appropriate remedy for the violations found to have occurred.

The administrative law judge retains jurisdiction of this matter. If the parties are unable to reach agreement on the appropriate remedy, the ALJ will reassert jurisdiction and preside at a hearing concerning the appropriate remedy. The hearing will be scheduled and held within 45 days of the date the proposed decision becomes PERB's final action on the merits of the complaint.

The costs of reporting and of the agency-requested transcript, in the amount of \$617.50, 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 Respondent 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 25th day of June, 2021.

/s/ Amber DeSmet

Administrative Law Judge

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