

STATE OF IOWA  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

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IN THE MATTER OF:	)	
	)	
CITY OF CEDAR FALLS,	)	
Petitioner,	)	
	)	
and	)	CASE NO. 102481
	)	
CEDAR FALLS FIREFIGHTERS ASSOCIATION,	)	
LOCAL 1366,	)	
Certified Employee Organization/	)	
Intervenor,	)	
	)	
and	)	
	)	
INTERNATIONAL ASSOCIATION OF FIRE	)	
FIGHTERS; IOWA PROFESSIONAL FIRE	)	
FIGHTERS; INTERNATIONAL UNION OF	)	
OPERATING ENGINEERS, LOCAL 234; IOWA	)	
FEDERATION OF LABOR, AFL-CIO; and	)	
IOWA STATE EDUCATION ASSOCIATION,	)	
Intervenors.	)	

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**RULING AND ORDER**

This matter comes before the Public Employment Relations Board (PERB or Board) upon the City of Cedar Falls’ petition for a declaratory order filed on October 2, 2020. Subsequently, the Board granted petitions for intervention filed pursuant to PERB rule 621—10.5(17A,20) by the Cedar Falls Firefighters Association, Local 1366 (Local 1366); the International Association of Fire Fighters (IAFF); the Iowa Professional Fire Fighters (IPFF); the International Union of Operating Engineers, Local 234 (IUOE); the Iowa Federation of Labor, AFL-CIO (Iowa Fed.); and the Iowa State Education Association (ISEA).

The petition poses a question whether a collective bargaining unit remains viable after a permanent department reorganization reduces the unit to one employee. The City asserts PERB should issue an order, and, on the merits of the question posed, the City requests PERB answer the question in the negative. All Intervenors assert that the Board should refuse to issue a declaratory order pursuant to PERB rule 621—10.9(17A,20). For various reasons, the Intervenors dispute the City’s proposed answer to the question posed.

All parties filed pre-argument briefs, the last of which was the City’s reply brief filed on February 16, 2021. The parties presented virtual oral arguments to the Board on March 2, 2021: attorneys Michael Galloway and Ann Smisek for the City; attorneys David Ricksecker and Nate Boulton for Local 1366 and IAFF; attorneys Charles Gribble and Christopher Stewart for IPFF; attorney Jay Smith for IUOE and Iowa Fed.; and attorneys Christy Hickman and Kathleen Schoolen for ISEA.

**I. FACTS AND QUESTION POSED.**

The City filed its petition to seek guidance from PERB on its obligations with respect to a bargaining unit of one Cedar Falls fire fighter and the unit’s representative, Cedar Falls Association of Firefighters, Local 1366.

PERB rule 621—10(17A,20) specifies that such petitions contain, inter alia, a clear and concise statement of the specific facts upon which

the Board is to base the declaratory order. The City's petition sets out specific facts, which may be summarized as follows:

On December 8, 1975, in PERB Case No. 473, PERB certified Cedar Falls Firefighters Association, Local 1366 (Local 1366), as the exclusive bargaining representative for the at-issue unit of fire fighters who work for the City of Cedar Falls. Local 1366 is an employee organization and the City is a public employer within the meanings of Iowa Code sections 20.3(4) and 20.3(10) respectively. Subsequently, the bargaining unit has been amended or clarified in PERB Case Nos. 949, 2073, 5683, 6868, 7988, and 8108.

The bargaining unit continues to be represented by Local 1366 and is currently described as follows:

**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 excluded by Iowa Code section 20.4.

The City and Local 1366 are presently parties to a collective bargaining agreement, which covers this unit and expires June 24, 2022.

On July 1, 2014, the City combined its police and fire departments into one public safety department. As a part of the transition, the City eliminated all fire fighter positions effective March 2, 2020. Seven of the

eight fire fighters in the unit were promoted or transferred to a different bargaining unit, which is represented by Teamsters Local 238.

One fire fighter, Scott Dix, remained in the unit. The City laid off Dix on June 22, 2020. The parties' collective bargaining agreement, Article 6C, section 6C.2, addresses recall and outlines the procedure for filling vacancies from recall lists of employees who are laid off and remain on the list for three years.

The City poses the following question in its petition:

When the members of a bargaining unit are reduced to one employee through a permanent department reorganization implemented by the employer does the collective bargaining unit of one person remain viable even when there is no longer a collective bargaining group of employees?

For its answer, the City asserts we should answer the question in the negative. The City argues a unit of one employee is not viable under PERB case law. Additionally, the City maintains PERB should adopt NLRB case law and order that the City is not required to recognize or bargain with the fire fighter unit, can repudiate the current contract, and unilaterally change any terms and conditions of employment for the one unit-employee.

In their briefs and at oral arguments, the Intervenors dispute the characterization and legality of the City's elimination of unit fire fighter positions and promotions of certain employees that occurred.<sup>1</sup> More

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<sup>1</sup> The Intervenors seemingly agree on their positions and arguments. Thus, these are summarized as one for the purposes of our ruling.

importantly, the Intervenors add that the City's underlying actions are the subject of ongoing litigation and pending cases at the time of oral arguments. Accordingly, the Intervenors assert additional facts, which can be summarized as follow:

In 2019, there were seemingly nine promotions of employees that left only one fire fighter, Scott Dix, in the bargaining unit. On June 28, 2019, Local 1366 challenged the City's promotions and filed a petition for injunctive and declaratory relief in Black Hawk County District Court, Case No. CVCV137836, *Int'l Assoc. of Firefighters, Local 1366 v. City of Cedar Falls*. The Court denied a motion for summary judgment due to disputed material facts. In February 2020, Local 1366 filed a complaint, PERB Case No. 102414, with PERB alleging the City committed section 20.10 prohibited practices regarding in part vacation. Local 1366 filed a subsequent complaint, PERB Case No. 102426, on April 2, 2020, alleging the City committed prohibited practices with respect in relevant part to the City's layoff and elimination of fire fighter positions that were once in the unit.

The Intervenors urge the Board to decline to issue an order pursuant to paragraphs (b), (e), and (f) of PERB subrule 10.9(1). It is also asserted that when a legal action arising out of the same controversy is pending, PERB should not entertain a separate legal action until the first has concluded. Alternatively, the Intervenors request the Board to answer the question in the affirmative on the merits.

## **II. Should a Declaratory Order be Issued?**

Iowa Code section 17A.9 provides the Board may refuse or decline to issue a declaratory order when a petition has been filed. Iowa Code § 17A.9(1) and (2). Accordingly, PERB's administrative rules contemplate our refusal to issue a declaratory order in certain circumstances. PERB subrule 621–10.9(1) sets forth grounds upon which the Board may refuse to issue an order. The enumerated grounds are as follow:

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

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

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

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

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

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

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

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

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

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

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

Iowa Admin. Code r. 621—10.9(1).

Intervenors cite several reasons why we should refuse to issue a declaratory order in response to the City’s question posed. As one, the Intervenors contend “[t]he question presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.” See PERB subrule 10.9(1)(e). The Intervenors concede the question posed in the petition here is distinct from that posed in any pending action on the legality of the City’s underlying actions. However, the Intervenors reason the legality question is a threshold question which requires a determination before we can issue an order on the viability of a one-employee bargaining unit. We agree when determinative facts are in dispute regarding the legality of the City’s underlying actions which led to the bargaining unit of one employee.

Paragraph (e) of PERB subrule 10.9(1) is fully applicable under these circumstances. The question posed in the petition inquires as to the chapter 20 rights and obligations for a resulting bargaining unit of one employee. It is premature to provide guidance on the employer’s future obligations when there are pending questions on the employer’s related prior obligations leading up to the petition and the question posed. These

pending questions are part and parcel of why there is now a bargaining unit of one employee. This is a matter of dispute amongst the parties as reflected by the pending actions as well as the Court's denial of summary judgment for this reason. We have long refused to issue declaratory orders where factual disputes exist, the resolution of which would require the reception and weighing of evidence. *Teamsters Local Union No. 147 & City of Pella*, 2002 PERB 6545 at 5; *State of Iowa & State Police Officers Council*, 1993 PERB 4789 at 5. Our answer to the question posed in the petition is dependent on the legality of the City's underlying actions that led to the bargaining unit of one. We decline to issue an order when this material fact is in dispute and more properly resolved in a different proceeding or another body with jurisdiction.

Another applicable ground for refusing to issue an order is “[t]he facts or questions presented in the petition are unclear, overbroad, insufficient or otherwise inappropriate as a basis upon which to issue a declaratory order.” See PERB subrule 10.9(1)(f). As we concluded, the legality of the City's underlying actions is a material fact that has yet to be determined and is absent from the petition along with facts pertaining to the outside pending actions. In declaratory order proceedings, we conduct no evidentiary hearing and make no factual determinations. *Teamsters Local Union No. 147*, 2002 PERB 6545 at 4. Rather, any declaratory order issued is based upon the facts set out in the petition. *Id.* The facts are incomplete and thus, insufficient in this regard.

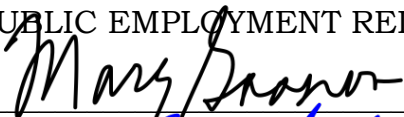


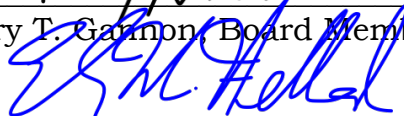
Although other grounds for declining to issue an order may be present, we think it unnecessary to consider the application of additional grounds where, as here, the pending question of the City's underlying action and critical insufficient facts militate against our issuance of a declaratory order. For reasons outlined, we thus decline to issue a declaratory order as requested.

IT IS THEREFORE ORDERED that the City of Cedar Fall's petition is DISMISSED.

DATED at Des Moines, Iowa this 23rd day of June, 2021.

PUBLIC EMPLOYMENT RELATIONS BOARD

  
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Mary T. Gannon, Board Member

  
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Erik M. Helland, Board Member

Original filed EDMS.