

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

EDDIE JONES,)	
Complainant,)	CASE NO. 102490
and)	
)	
STATE OF IOWA (DEPARTMENT OF)	
CORRECTIONS),)	
Respondent.)	

DECISION AND ORDER

This case is before the Public Employment Relations Board (PERB or Board) on the Complainant’s petition for review of a proposed decision and order issued by an administrative law judge (ALJ) following an evidentiary hearing on Eddie Jones’ (Jones) Iowa Code section 20.11 prohibited practice complaint. Jones filed his complaint alleging the State failed to supply him with information that he requested. An evidentiary hearing was held on April 30, 2021. Both parties filed post-hearing briefs. The proposed decision and order was issued by the ALJ on February 1, 2022. Jones filed his notice of appeal on February 14, 2022. Oral arguments were scheduled and held on December 14, 2022.

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 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 petition for review we have utilized the record as submitted to the ALJ. Based upon our review of

this record, as well as the parties' oral arguments, we adopt the ALJ's findings of fact and we adopt the ALJ's conclusions of law with additional discussion and modification.

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. We adopt the ALJ's factual findings as our own.

CONCLUSIONS OF LAW

We agree with the ALJ's determinations as set out in Appendix A and adopt them as our own, with the additional modification and discussion. Accordingly we enter the following:

Iowa Code section 20.8(3) provides in that:

Public employees shall have the right to: ...

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

There is no dispute in this case that the State of Iowa is a public employer, and that Jones, being a correctional officer employed at the Newton Correctional facility, is part of the security bargaining unit represented by AFSCME Iowa Council 61 by virtue of his employment as a correctional officer. At issue here is whether Jones engaged in "other concerted activities for the purposes of collective bargaining or other mutual aid or protection" when he emailed Captain Mike Robinson on July 9, 2020 requesting copies of all-day shift rosters from January 1, 2020 to June 30, 2020. His request was ultimately denied on July 22, 2020. In Exhibit 1, Jones' request stated "I would like copies of all day shift

rosters from 1JAN20 through 30JUN20. They do not need to be physical copies, electronic copies are fine. Thank you in advance for your time and consideration on this matter.” See Ex 1. There was no indication in the request that Jones was acting on behalf of another person, that his request was directed toward the enforcement of a collectively bargained right, that his request was for the purpose of other mutual aid or protection, or that he intended group activity that would benefit other employees.

In his testimony, when asked “...were you requesting these documents on behalf of yourself?” Jones replied: “On behalf of my - - yeah because only I can file a grievance. The union can no longer file grievances, so each individual employee must file grievances.” Hear. Trans. at 17:17-23. Jones testified that he was “researching something” and he “needed those records to figure out if there was even a grievance there.” Hear. Trans. at 16:1-3. At no point did Jones provide evidence of what he was researching. When the employer attempted to inquire what the issues or concerns were regarding, Jones stated that he would not discuss the issues with management. See Ex. 1.

The term “concerted activity” is not defined in the Iowa Code or the National Labor Relations Act (NLRA); however, it has been defined by case law. It is clear that “[t]he invocation of a right rooted in a collective-bargaining agreement is unquestionably an integral part of the process that gave rise to the agreement.” *NLRB v. City Disposal Systems, Inc.*, 465 U.S. 822, 831 (1984). Further, “the acts of joining and assisting a labor organization ... are related to collective action in essentially the same way that the invocation of a collectively

bargained right is related to collective action.” *Id.* at 833. “As long as the nature of the employee’s complaint is reasonably clear to the person to whom it is communicated, and the complaint does, in fact, refer to a reasonably perceived violation of the collective-bargaining agreement, the complaining employee is engaged in the process of enforcing that agreement.” *Id.* at 840. Action done individually may be concerted “if it represents either a continuation of earlier concerted activities or a logical outgrowth of concerted activities.” *St. Paul Park Refining Co., LLC v. NLRB*, 929 F.3d 610, 616 (8th Cir. 2019)(citing *NLRB v. RELCO Locomotives, Inc.*, 734 F.3d 764, 785 (8th Cir. 2013)). There must be substantial evidence on the record as a whole that supports the finding that an employee intended or contemplated, as an end result, to benefit employees other than himself. *See Koch Supplies Inc., v. NLRB*, 646 F.2d 1257, 1259 (8th Cir. 1981)(per curium)).

In this case, Jones requested copies of all day shift rosters from January 1, 2020 through June 30, 2020. He did not indicate in any way that he was invoking a right granted to him in his collective bargaining agreement, that he believed that a collectively bargained right was being violated, that he was acting on behalf of another employee, or that he was assisting the labor organization. To the contrary, Jones testified that he was requesting the documents on his own behalf and presented no further evidence that the nature of his complaint, his “researching something” was reasonably clear to the person to whom it was communicated and that it was for the purpose of collective bargaining or other mutual aid or protection. For an employee’s activities to be protected under the

Act, the activities must be concerted. *N.L.R.B. v. Dawson Cabinet Co.*, 566 F.2d 1079, 1082 (8th Cir. 1977). Jones has failed to establish that he engaged in other concerted activities for the purpose of collective bargaining or other mutual aid or protection when he requested for copies of all day shift rosters from 1JAN20 through 30JUN20 on July 9, 2020. As such, no violation of Iowa Code section 20.10(2)(a) exists.

ORDER

Jones' prohibited practice complaint is dismissed.

The cost of reporting and of the agency-requested transcripts in the amount of \$295.85 are assessed against Jones, pursuant to Iowa Code section 20.11(3) and PERB rule 621-3.12(3). A bill of costs will be issued to Jones in accordance with PERB subrule 3.12(3).

This decision constitutes final agency action.

DATED at Des Moines, Iowa, this 5th day of January, 2023.

PUBLIC EMPLOYMENT RELATIONS BOARD



Erik M. Helland, Board Member



Cheryl Arnold, Board Member

Filed electronically.
Parties served via eFlex.

APPENDIX A

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

EDDIE JONES, Complainant,)	
and)	
STATE OF IOWA (DEPARTMENT OF CORRECTIONS), Respondent.)	CASE NO. 102490

PROPOSED DECISION AND ORDER

The Complainant, Eddie Jones, filed this prohibited practice complaint with the Public Employment Relations Board (PERB) on October 20, 2020, pursuant to Iowa Code section 20.11 and PERB rule 621—3.1. Jones alleges that the State committed a prohibited practice within the meaning of Iowa Code sections 20.8 and 20.10 when the State did not supply the requested information he needed to evaluate a potential grievance.

Pursuant to notice, an evidentiary hearing on the merits of the complaint was held before me on April 30, 2021, via video conference. Jones represented himself and attorney Anthea Hoth represented the State. Both parties filed post-hearing briefs on or before June 25, 2021. After considering the evidence and arguments of the parties, I propose the following:

FINDINGS OF FACT

The State of Iowa is a public employer as defined in Iowa Code section 20.3(10). Eddie Jones is a correctional officer employed at the Newton Correctional facility. Correctional officers are part of the security bargaining unit represented by AFSCME Iowa Council 61.

On July 9, 2020, Jones emailed Captain Mike Robinson requesting copies of all-day shift rosters from January 1, 2020 through June 30, 2020. A week later, Robinson notified Jones via email that he would receive the information “early next week.” On July 22, Robinson emailed Jones that his document request was denied.

There is little evidence in the record concerning the document request. According to Jones, he was requesting the day shift rosters on his own behalf to “evaluate the possibility of a grievance being filed.” Additionally, there is little evidence concerning the potential grievance except that, according to Jones, it may affect every correctional officer. There is no evidence Jones spoke with fellow correctional officers regarding the document request or his concerns relating to the shift roster. Nor is there evidence that Jones was acting on behalf of other correctional officers.

Jones filed the instant complaint with PERB on October 20, 2020.

CONCLUSIONS OF LAW

Jones’ complaint alleges that the State committed prohibited practices by denying him information concerning a potential grievance.

In prohibited practice proceedings, the complainant must prove each element of the charge. *Davenport Ass’n of Prof’l Fire Fighters and City of Davenport*, 2021 PERB 102164 & 102311, App. at 11; *AFSCME Iowa Council 61 and State of Iowa*, 2020 PERB 102059 at 8 (citing *United Elec. Radio Mach. Workers of Am., Local 896 (COGS) and State of Iowa, Bd. Of Regents*, 2019 PERB 100800 & 100814 at 17). In this case, Jones contends the State engaged in prohibited practices within the meaning of Iowa Code sections 20.8 and 20.10. These provisions state:

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 in so far as any 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.
5. Exercise any right or seek any remedy provided by law, including but not limited to those rights and remedies available under sections 70A.28 and 70A.29, chapter 8A, subchapter IV, and chapters 216 and 400.

20.10 Prohibited practices.

1. It shall be a prohibited practice for any public employer, public employee, or employee organization to refuse to negotiate in good faith with respect to the scope of negotiations as defined in section 20.9.
2. It shall be a prohibited practice for a public employer or the employer's designated representative to:
 - 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.
 - f. Deny the rights accompanying certification granted in this chapter.
 - g. Refuse to participate in good faith in any agreed upon impasse procedures or those set forth in this chapter.
 - h. Engage in a lockout.

20.10(2)(a) Violation:

Jones' argues that the gathering of documents pertaining to a potential grievance was concerted activity protected by section 20.8(3) of the Act. He further argues that the State's denial of this document request amounts to a prohibited practice under Iowa Code section 20.10.

Iowa Code section 20.10(2)(a) provides that it is a prohibited practice for a public employer or its designated representative to interfere with, constrain or coerce public employees with regards to their section 20.8 rights. Section 20.8(3) guarantees public employees the right to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

Both Iowa Code sections 20.8 and 20.10(2)(a) are similar to sections 7 and 8 of the National Labor Relations Act (NLRA). *AFSCME Iowa Council 61, 2020 PERB 102059* at 11; *Davenport Educ. Ass'n and Davenport Cmty. School Dist.*, 84 HO 2490 at 9. Both section 20.8 and section 7 of the NLRA grant employees the right to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection. *Koehn and Indian Hills Cmty. Coll.*, 03 PERB 6414, App. at 20; *Miller and College Cmty. School Dist.*, 2017 ALJ 100719 at 15. Additionally, section 20.10(2)(a) and section 8 of the NLRA prohibit employers from interfering with employees in their exercise of their rights.

When a similarity exists between chapter 20 and the NLRA, PERB considers National Labor Relations Board (NLRB) and federal court decisions as illuminating and instructive on the meaning of section 20.8(3). *AFSCME Iowa Council 61, 2020 PERB 102059* at 26 (informative and illuminating, although not binding.) (citing

Koehn, 03 PERB 6414, App. at 20); *Davenport Educ. Ass'n*, 84 HO 2490 at 9 (citing *City of Davenport v. PERB*, 264 N.W.2d 397,313 (Iowa 1978)).

Although neither the Iowa Code nor the NLRA defines “concerted activity,” it has been defined by case law. In *Meyers Industries II*, the NLRB explained that concerted activity “encompasses those circumstances where individual employees sought to initiate or to induce or to prepare for group action as well as individual employees bringing truly group complaints to the attention of management.” *Meyers Industries, Inc. and Prill*, 281 NLRB 882, 887, 123 LRRM 1137, 1142 (1986).

PERB has held that while the scope of section 20.8 activities may be broad, it is not all encompassing. *AFSCME Iowa Council 61*, 2020 PERB 102059 at 26; *Public, Prof'l & Maint. Emps., Local 2003 and Black Hawk County*, 97 PERB 5399 at 6; *Miller*, 2017 ALJ 100719 at 15. In order for an employee’s actions to be considered concerted activity for the purpose of mutual aid or protection within the meaning of section 20.8(3), PERB has held that the action must be taken by two or more employees or by an employee who is acting for or on behalf of other employees. PERB has not found that an employee acting solely on his own behalf is engaged in concerted activity within the meaning of section 20.8(3). *Public, Prof'l & Maint. Emps., Local 2003*, 97 PERB 5399 at 6-7; *Miller*, 2017 ALJ 100719 at 15; *Int'l Union of Operating Eng'rs, Local 234 and Spencer Municipal Hospital*, 2007 HO 7137 at 8, 9.

As previously discussed, Jones has the burden of proof in this case. As a result, in order to prove that the State was engaged in prohibited practices within Iowa Code section 20.10(2)(a) when it refused to supply the requested

documentation, Jones must first establish that he was engaged in concerted activity protected by the statute when he made the documentation request.

The record is insufficient to show Jones' request was concerted activity. There is no evidence that Jones was acting in concert with any other employees or acting on behalf of other employees as opposed to acting individually and solely on his own behalf. Although Jones testified that it may affect every correctional officer, Jones presented no evidence that he had spoken to any correctional officer regarding his concerns prior to requesting the day shift rosters, that he acted on behalf of other employees, or that he requested the information in order to initiate, induce or prepare a group grievance. Due to this lack of evidence, I cannot infer that Jones' request for documentation was a group action undertaken by him on behalf of other correctional officers. As a result, I cannot find that this document request was protected concerted activity within the meaning of section 20.8(3). Accordingly, I find that the State did not violate section 20.10(2)(a).

Other 20.10 Violations:

Additionally, Jones claims that the State violated section 20.10 of the Act. Based upon the evidence presented, the arguments made at hearing, and the submitted brief, it appears Jones is alleging a section 20.10(2)(a) violation. There is no evidence in the record of any other 20.10 statutory violation. Thus, I cannot find that the State violated sections 20.10(1), (2)(b) through (h).

ORDER

Consequently, I propose the following:

Jones' prohibited practice complaint is DISMISSED.

The costs of reporting and of the agency-requested transcript in the amount of \$188.95 are assessed against the Complainant, Eddie Jones, pursuant to Iowa Code section 20.11(3) and PERB rule 621—3.12. A bill of costs will be issued to Jones in accordance with PERB subrule 3.12 (3).

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

DATED at Des Moines, Iowa, this 1st day of February 2022.

/s/ Susan M. Bolte
Susan M. Bolte
Administrative Law Judge

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Parties served via eFlex