

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF:)	
)	
JOHNSON COUNTY,)	
Public Employer,)	
)	
and)	CASE NO. 102511
)	
MARCIA MCKINLEY, SHYLA MAHACEK, LINDSEY)	
BECHTEL, CATHERINE BOWMAN, JOHN DEETH,)	
PAIGE GABRIEL, BERNARD GAMAMOU, RENEE)	
GEROT, CYNTHIA GILLHAM, ANTONIO GOMEZ,)	
AMBER GORVIN, GINA HEICK, LINDSEY JANDA,)	
MISCHEALE LUZE, JULIE MILLER, ALYSSA)	
RODRIGUEZ PALANTE, AMERLIA SHERRETS,)	
JACKIE STIMMEL, and SARAH ZAFFIS,)	
Petitioners,)	
)	
and)	
)	
PUBLIC, PROFESSIONAL AND MAINTENANCE)	
EMPLOYEES, LOCAL UNION NO. 2003,)	
Certified Employee Organization.)	

DECISION AND ORDER

Nineteen employees of Johnson County and members of bargaining unit of BU-0146 filed a timely objection to the Fall 2020 retention and recertification election pursuant to Iowa Code Section 20.15(4) and Public Employment Relations Board (PERB) subrule 5.4(2)(g). The objecting employees claim misconduct or other circumstances, prevented employees from freely expressing their preferences in the election and ask PERB to set aside the results of the election and are seeking a second election. PERB's tally of the BU-0146 votes on October 27, 2020, determined the required majority of eligible voters in BU-

0146 voting yes was not attained and therefore, BU-0146 did not vote to retain Public Professional & Maintenance Employees (PPME) as their bargaining representative.

An evidentiary hearing on the objection was held before the Board on February 1, 2021, via a Zoom web conference. Marcia McKinley and Shyla Mahacek, both members of BU-0146 themselves, represented objecting members of the bargaining unit. PPME Business Representative Mark Hubbard represented PPME. Johnson County Attorney Janet Lyness and Johnson County Human Resources Director Lora Shramek represented the Johnson County. McKinley and Mahacek of BU-0146 and Hubbard, on behalf of PPME, filed post-hearing briefs on February 21, 2021. Janet Lyness filed a post-hearing brief on behalf of Johnson County on February 22, 2021.

Based on a review of the record, briefs, and arguments presented by all parties and deliberation by the Board, the objection to the election is OVERRULED.

I. FINDINGS OF FACT.

A. Johnson County Human Resources Procedures

Testimony from Johnson County Human Resources personnel demonstrated a thorough orientation process for employees. Every new employee is provided information on their collective bargaining status, a copy of the collective bargaining agreement, identification of his or her certified employee organization (CEO), and the identification of the union steward, if applicable. Lora Shramek,

has directed Johnson County's human resources administration for twenty-three years, in her testimony at hearing she stated there are six collective bargaining units representing employees of Johnson County.

PPME represents three bargaining units and the American Federation of State, County, and Municipal Employees (AFSCME) represents three bargaining units. Five Johnson County bargaining units participated in the October 2020 retention and recertification election, two AFSCME units and three PPME units. PPME represents Johnson County bargaining units whose employees work for the Sheriff's office, Secondary Roads, and the Administrative Unit. BU-0146 is commonly referred to as the "Administrative Unit." This unit has employees working in the Administration building and the Health & Human Services Building which is connected by a walkway. Employees from both buildings have access to a second floor breakroom in the Administration building used for all union related notices.

Due to the COVID-19 pandemic, many Johnson County employees were working remotely. Johnson County maintained a policy whereby all employees working remotely must have access to their work email. Employees must sign an acknowledgment of this policy prior to remote work.

Johnson County representatives expressed a willingness to submit to a revote for retention and recertification if authorized by PERB.

B. PPME's Certification to Represent BU-0146

PPME is an employee organization within the meaning of Iowa Code section 20.3(4)¹ and is the certified representative for BU-0146. PERB case No.2322 established PPME as the certified representative of BU-0146 in 1986. BU-0146 contained sixty-nine eligible voters at the onset of voting on October 13, 2020. BU-0146 consists of various employees employed by the Johnson County Attorney, Auditor, Board of Supervisors, Recorder, treasurer offices and its Department of Information Technology, Physical Plant, Planning and Zoning, and Public Health. John Deeth is the Union steward for BU-0146 and is employed as an Elections Technician II with the Johnson County Auditor. This unit is commonly referred to as the Administrative Unit or Courthouse Unit. Employees of the unit work in two buildings connected by a walkway.

The current unit description, reflected in PERB Case No. 4558:

INCLUDED: Employees of the Johnson County Board of Supervisors, Recorder, Treasurer, Auditor, Attorney, and the county's Data Processing, Physical Plant, and Planning and Zoning Departments; and employees of the Johnson County Department of Public Health in these existing classifications: Receptionist, Secretary I, Clerk I, Clerk II, Clerk IV and Social Work Associate.

EXCLUDED: All supervisory, confidential, and other employees excluded by Chapter 20 of the Iowa Code and other employees of the Johnson County Department of Public Health. Who include employees of the Johnson County Board of Supervisors, Recorder, Treasurer, Auditor, Attorney, and the county's Data Processing, Physical Plant, and Planning and Zoning Departments; and

¹ All references are to Iowa Code (2019).

employees of the Johnson County Department of Public Health in these existing classifications: Receptionist, Secretary I, Clerk I, Clerk II, Clerk IV and Social Work Associate.

C. Retention and Recertification Election Proceedings

Iowa Code Section 20.15(2)(a) requires PERB to conduct elections for retention and recertification of certified employee organizations (CEO) by their bargaining units. In the fall of 2020, PERB conducted retention and recertification elections of certified employee organizations for bargaining units subject to collective bargaining agreements with a June 30, 2021 expiration date.

The question put forth on the ballot asked members of the bargaining unit if they wish to retain the bargaining representative. A majority of the unit members must cast a "yes" vote to retain and recertify the bargaining representative; a bargaining unit member who does not cast a vote, equates a "no" vote. To recertify and retain a CEO, a more than 50% of a bargaining unit's eligible voters must vote in the affirmative.

PERB efiles three notices regarding the election process. The efilings of first two notices, the "Notice of Intent to Conduct a Retention and Recertification Election" and "Notice to Employees" initiate the election process. PERB sends a Notice of Intent to Conduct a Retention and Recertification Election to CEO's and employers.

PERB filed a Notice of Intent to Conduct a Retention and Recertification Election (Notice 1) on August 26, 2020 for all units who may have a retention and recertification election, including BU-0146. While the Notice 1 contains instructions on the distribution of other notices, there is no requirement to distribute Notice 1 to employees.

The Notice 1 contains the order for election from the PERB board, the voting schedule, and voting instructions for employees. Page two of this notice provides explicit instructions for the employer:

The **Employer shall promptly post the Notice to Employees** in the manner and locations customarily used for posting. That notice shall remain posted until **September 16, 2020**. If the Employer customarily distributes information to employees by additional means, such as by email or hard copy, the **Employer shall promptly distribute the Notice to Employees** to the affected employees through those means as well.

PERB filed Notice 2 on August 26, 2020 with all employers subject to a collective bargaining agreement set to expire June 30, 2021, including Johnson County. The Notice to Employees (Notice 2) is a two-page document containing information regarding the authority and duty of PERB to conduct an election. Employers receive the notice then distribute and post the notice for employees per the instructions provided in Notice 1 and repeated in the header of Notice 2.

Notice 2 lists the voting period, provides directions for questions, and contains a description of employees who are included and excluded from the

bargaining unit who will vote. The first page of Notice 2 stated the voting period would be from 7:00 a.m. on Tuesday, October 13, 2020, to 9:00 a.m. on Tuesday, October 27, 2020. The second page is a description of included and excluded employees of the bargaining unit.

The description of the relevant bargaining unit is centered and listed in bold font. At the bottom of the first page centered and in bold is a statement to employees directing questions to the Public Employment Relations Board. The notice provides an address, phone number, email, and website directly below the statement. Danelle Essing, the managing secretary for Johnson County Attorney's office posted the notice in the breakroom bulletin board customarily used to post union related material. Essing also emailed the notice to Johnson County employees through their work emails.

The final notice PERB files is referred to as the Notice of Election (Notice 3). On September 16, 2020 PERB efiled the Order Directing Election. Page three of this order is a Notice of Telephone and Web-Based Retention and Recertification Election (Notice of election).

The first two pages of Notice 3 contain the official order from PERB explaining the authority, purpose and time of the election. Employers distribute by email and posting pages three through six. Page three is a sample ballot, with instructions on how and when to vote. Page four provides a voting schedule in bold font, information about how and when to vote, and at the bottom of the page two conspicuous boxes standing apart from the text of the notice. The boxes

direct questions to either the election vendor or PERB and how to contact either with inquiries. Page four also contains step by step voting instructions, time of voting, and again lists the election vendor and PERB as a point of contact for questions. The last page of Notice 3 contains a description of the bargaining unit.

Denell Essing the posted Notice 3 on the bulletin board used for bargaining unit related notices. Essing also emailed the notice to all Johnson County employees.

In October 2020, PERB conducted 281 elections with 40,546 eligible voters. Statewide 74.6% of eligible voters participated in the retention and recertification elections. On October 27, 2020, PERB filed the official tally of ballots for the retention/recertification elections. 266 (94.7%) bargaining units voted to retain their certified employer organization by an average margin of 98.9%. The same notices initiated and directed elections for all 281 bargaining units.

In Johnson County, five bargaining units participated in the election. Two AFSCME units (BU-0347 and BU-0344) and three PPME units (BU-0146, BU-1083, BU-0345). The relevant parties in all five elections received the same notices, differentiated only by the identification of the relevant parties, efiled by PERB with appropriate parties.

The BU-0146 official election tally is 25 “yes”, 1 “no”, and 43 eligible voters who did not vote. A failure to participate constitutes a “no” vote. Therefore, the

official tally 26 “yes” and 43 “no”, therefore the members of BU-0146 officially voted to decertify PPME as the CEO.

Two of the three PPME units BU-1083 and BU-0345 voted to recertify PPME with 86% and 87% respectively voting to retain PPME. 10 eligible voters from BU-1083 did not vote, no voters voted against recertification. 5 eligible voters from BU-0345 did not vote, no one voted against recertification.

The two AFSCME units in Johnson County recertified with 79% and 100% voting to retain their CEO. Of the 71 total eligible AFSCME voters in Johnson County, only 13 did not vote and only 1 voted against retaining the union.

D. PPME Election Activity

Although local union representative, John Deeth, did not campaign or contact members, PPME conducted an extensive campaign throughout September and October aimed at eligible voters in all three Johnson County bargaining units for which PPME was the CEO. PPME used multiple text blasts, postcard mailers, flyers placed on doors, and more than one phone bank in effort to reach out to employees in the Johnson County bargaining units eligible to vote in the retention and recertification election. PPME business representative Mark Hubbard stated during testimony that PPME is willing to participate in a revote.

E. Employees of Bargain Unit BU-0146

Nineteen Johnson County employees who are members of BU-0146 bring this action. Ten testified in hearing, there were also 15 affidavits submitted. All members of BU-0146 who testified other than John Deeth also submitted

affidavits. During the testimony, four of the ten employees testified they voted in the election, four stated they did not vote in the election. Twelve employees signed affidavits stating they did pay dues to PPME. Cynthia Gillham, Paige Gabriel, and Marcia McKinley all testified they had prior experience with Unions and voted in the election.

The employees testified notices efiled by PERB and posted by the Johnson County were confusing. As a result, they did not understand the importance of the election and eligibility of employees to vote. Petitioners also claim the pandemic and resulting remote work conditions prevented employees from communicating with one another about the retention and recertification election, and that PPME failed to run an effective campaign and the concurrent 2020 general elections caused confusion.

II. CONCLUSIONS OF LAW

The petitioners request that PERB authorize the eligible voters of BU-0146 an immediate opportunity to hold another retention and recertification election and nullify the results of the October 2020 election conducted by PERB. No party asserts that misconduct prevented members of BU-0146 from participating in the election. The petitioners allege circumstances other than misconduct prevented employees from freely expressing their preference.

Reasons arising to "circumstances preventing free expression" put forth by the objecting employees of BU-0146 consist of confusing notices leading to an inadequate understanding of the retention and recertification election, a lack of

communication resulting from the COVID-19 pandemic, all coinciding with the November 2020 general election. Specifically, they allege the County's communication was not clear, the employees did not understand the PERB notices, and PPME did not effectively campaign.

Relevant Administrative Rules

621—5.4(2) Objection to an election

....

5.4(2) *Objectionable conduct during election campaigns.* The following types of activity, ...if determined by the agency that such activity could have affected the results of the election, shall be considered to be objectionable conduct sufficient to invalidate the results of an election:

....

g. Any other misconduct or other circumstance which prevents employees from freely expressing their preferences in the election.

Analysis

The question presented by this case is whether the employees' assertions that confusing communications, the COVID-19 pandemic, the 2020 general election, and PPME's allegedly ineffective campaign prevented employees from expressing their preferences in the retention and recertification elections.

It is incumbent upon PERB to be wary of affording a revote for circumstances outside of misconduct or failure by a responsible party to adhere to a statutory timeline lest we "open a floodgate to what would be countless exceptions to the retention/recertification rules and their applicable

deadlines." See *City of Lake Mills and Int'l Brotherhood of Electrical Workers, Local 204*, 2019 PERB 102264 at 13.

Furthermore, the complexity, size, and compressed timeframe required to execute a retention and recertification election effectively requires PERB to scrutinize circumstances in the absence of misconduct and afford a second election only when it has been demonstrated voters were unable to participate.

Following a thorough and independent review of the facts and testimony, the Board comes to a markedly different conclusion than that of the Petitioners. There is a lack of objective evidence establishing the BU-0146 eligible voters were prevented from freely expressing their preferences in the fall 2020 election.

A. Notices and communications about the campaign during a general election and pandemic.

Members of BU-0146 assert ambiguous notices and the lack of awareness of PERB and PERB's role prevented them from understanding the role of the eligible voter in the election and the importance of the election itself. Furthermore, the employees suggest remote work complicated communication amongst the employees and that given the chance to communicate more effectively they would have understood the importance of the election.

Exhibits and credible testimony demonstrate a minimum of two notices from posted on the employee bulletin board, two emails from the employer, and

a campaign by PPME that attempted to reach members of BU-0146 eleven times. Nearly all of these communications provided instructions on voting timeframes, manner of voting, and contacts for assistance, there is no evidence eligible voters from BU-0146 attempted to contact PERB with questions prior to the conclusion of the election.

PERB oversaw 281 retention and recertification elections in the fall of 2020. Of the 40,546 eligible voters, 74.6% chose to cast their vote in the election period. In Johnson County 85% of the eligible voters in the other four bargaining units, undergoing elections cast a vote. The two other units represented by PPME recertified PPME with 86% and 87%.

Every other election statewide received structurally identical notices differentiated only by the identifications of the employers, CEO, and bargaining unit. All 281 elections occurred under an identical schedule. COVID-19 was evident in every county of the state in October 2020. With overwhelming participation rates and exceptionally high certification rates under nearly identical conditions regarding notices, political elections, and the pandemic, it is unreasonable to attribute the lack of participation to reasons alleged by the petitioners.

Statewide participation rates and testimony from Johnson County provide clear and convincing evidence of the availability of an effective notice, delivered to the employees via the breakroom and email, which all members of BU-0146 had access to no matter if they were in the office or working remotely.

While the circumstances facing all Iowans in 2020 have certainly disrupted lives and communication, they did not shut down all communication. Members of BU-0146 were not rendered wholly incapable of discussing amongst each other and learning about the election. The employees in BU-0146 were afforded weeks to communicate with one another or PERB and chose not to do so.

The record demonstrates BU-0146 eligible voters were given ample time to learn, understand, communicate with one another, direct questions to PERB and cast a vote in the retention and recertification election. It can only be logically concluded that the employees own free will lead them to make discretionary choices to attend to other matters in their life rather than invest time and concern in learning about, advocating for, or in the case of 63%, even casting a vote in the election. PERB respects these choices and must uphold the election results.

B. PPME election activity

PPME participated in two other nearly identical elections simultaneously in Johnson County, winning both elections with 86% and 87% of the vote. It would seem impossible to believe the inactivity of one union rep accounts for the 50% drop off in participation BU-0146 experienced compared to the other two PPME units. Employees in BU-0146 with prior knowledge of unions could have just as easily as Deeth stepped up and led an effective campaign. The election results speak for themselves and PERB should not weigh in on the

discretionary choices of the four members with union experience and their efforts or lack thereof to recertify PPME as the CEO.

Neither PPME nor any CEO bears even a modicum of legal obligation to campaign for retention and recertification. Any activity transcending their codified election requirements is, in actuality, "going above and beyond." The choice of the certified employee organization to invest resources and time is a function of their relationship with the bargaining unit members. Conversely, the decision on how to express the employee's preference is manifestation of the employee's discretionary choice.

Theoretically, the very point of the election is to allow members of a bargaining unit and the CEO an opportunity to evaluate whether or not they wish to continue the relationship. This relationship is beyond PERB's scope and jurisdiction and highly inappropriate for PERB to weigh in on the *effectiveness* of campaign by a CEO.

Although both Johnson County and PPME expressed a willingness to hold a second election, there is no legal basis for authorizing a second election simply because the parties are willing.

Even if, assuming the absence of misconduct, all sixty-nine voters asked for another election after decertification there would still be no grounds or authority for PERB to authorize another election. There is no critical mass of eligible voters to sanction a follow-up election simply because the voters do not like the outcome.

It is the employer's responsibility to post notices and certify voter eligibility; this obligation was satisfied. It is the responsibility of the CEO's to certify voter eligibility, this too was satisfied. It is the responsibility of PERB to distribute notices to employers and CEOs, oversee the election, tally the votes, and certify or decertify appropriately according to the vote. This too was satisfied. It is the eligible voter's obligation to choose how *or* whether to vote.

III. CONCLUSION

We reject the claims asserted by the members of BU-0146 that circumstances existed which prevented employee from freely expressing their preferences. The nineteen petitioners cannot claim harm from their own inaction, and PERB cannot conclude that circumstances other than misconduct *prevented* eligible voters in BU-0146 from freely expressing their preference. (Emphasis Added).

ORDER

The objection put forth by BU-0146 is overruled. The Board will issue an order of decertification in accordance with the tally of the retention and recertification election votes filed by PERB on October 27, 2020.

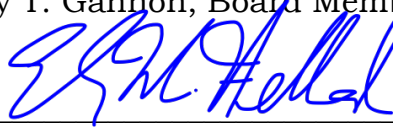
This decision constitutes final agency action.

DATED at Des Moines, Iowa, this 20th day of May 2021.

PUBLIC EMPLOYMENT RELATIONS BOARD



Mary T. Gannon, Board Member



Erik M. Helland, Board Member