

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF:)	
)	
WARREN COUNTY,)	
Public Employer,)	
)	CASE NO. 102622
and)	
)	
WARREN COUNTY PROSECUTING)	
ATTORNEYS ASSOCIATION,)	
Certified Employee Organization.)	

REVOCATION OF CERTIFICATION

On September 27, 2021, the Public Employment Relations Board (PERB or Board) issued an Order to Show Cause setting a hearing and ordering the representatives of the Warren County Prosecuting Attorneys Association to show cause why certification should not be revoked for failure to timely pay a retention and recertification election fee. The Board conducted an evidentiary hearing on October 4, 2021. Eric Anderson appeared on behalf of the Employee Organization. Ann Smisek appeared on behalf of the Public Employer.

I. FINDINGS OF FACT

Based on evidence received at hearing and PERB documents officially noticed, the following facts are established. The Public Employment Relations Board certified the Warren County Prosecuting Attorneys Association (Employee Organization) in 2019 (PERB Case No. 102384) as the exclusive bargaining representative for the following bargaining unit of Warren County:

INCLUDED: Full-time Assistant County Attorneys.

EXCLUDED: First Assistant County Attorney, Part-time Assistant County Attorneys, Victim/Witness Coordinator, secretarial/support staff, all other part-time and temporary employees and all others excluded by Iowa Code section 20.4.

The current collective bargaining agreement between the County and the Employee Organization is due to expire on June 30, 2022. By Notice of Intent to Conduct an Election, filed on August 25, 2021, in case number BU-1161, PERB notified the Public Employer and the Employee Organization of its intent to conduct a retention and recertification election for the bargaining unit described above. The Public Employer was required to submit to PERB a list of eligible voters by September 1, 2021. The Public Employer timely submitted a voter list. The Employee Organization was required to pay by check the applicable election fee, or submit a written payment extension request, to PERB by September 13, 2021. PERB did not receive the payment by September 13. The Employee Organization did not request an extension to pay the election fee.

At the October 4, 2021, show cause hearing, Eric Anderson testified on behalf of the Employee Organization. Anderson testified he mailed the election fee payment to PERB on September 3, 2021, by regular U.S. mail. He listed his home address as the return address. Anderson affixed postage to the envelope, handed it to an administrative assistant, and requested the envelope be placed in the outgoing mail. The administrative assistant is responsible for taking all mail from the County Attorney's office to the mailroom. Per her standard practice, she took all the outgoing mail to the mailroom located in the County's administration building at the end of the day. Anderson does not know what

happened to the mailing, but testified that all areas around the mail have been searched and the envelope was not found. The envelope has not been returned to Anderson. The first time Anderson learned the payment did not arrive at PERB is when the agency contacted him on September 14 to inform him of such. He informed the agency at that time that he mailed the payment. After the payment did not arrive, the Employee Organization hand-delivered the election fee payment to PERB on September 28.

II. CONCLUSIONS OF LAW

Iowa Code subsection 20.15(2) requires PERB to conduct a retention and recertification election prior to the expiration of the collective bargaining agreement between the parties. The Warren County bargaining unit at issue here was correctly identified for a retention and recertification election. Iowa Code section 20.6(7) and PERB rules provide that the certified employee organization is responsible for the advance payment of election fees to cover the cost of such elections. The Board has authority under subsection 20.25(6) to revoke the certification of an employee organization who fails to comply with the requirements of chapter 20. PERB subrule 15.5(5) further provides that the Board shall revoke the certification of the employee organization who fails to timely pay the required election fee.

PERB sets the election schedule. In the August 25, 2021, Notice of Intent to Conduct an Election, the Public Employer and the Employee Organization were notified of the applicable deadlines. After the Public Employer timely submitted the list by September 1, the Employee Organization

was required to send the election fee payment to PERB no later than September 13.

PERB subrule 15.5(5) controls the Board's decision in this case. The rule states, in part, that the election fee "is deemed paid upon receipt by the agency or, if submitted by mail, on the date of the U.S. Postal Service postmark affixed to the envelope in which the payment was mailed." We conclude the rule language clearly and unambiguously directs that timely mailing can only be established by providing physical proof of mailing. In this instance, the Employee Organization mailed the payment on time, but PERB has not received the envelope and it has not been returned to the Employee Organization. Thus, the Employee Organization was unable to provide physical proof of timely payment.

PERB subrule 15.5(5) states that an employee organization's failure to timely pay the election fee "shall result in the revocation of the organization's certification." This consequence is mandatory when an employee organization fails to timely pay the election fee. As such, absent a showing of a timely mailed payment, the Board is required to revoke the certification of the Employee Organization. Under the evidence presented before the Board, the Employee Organization has not provided physical proof of the timely mailed payment, and the Board must revoke certification.

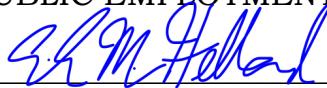
Therefore, pursuant to PERB's authority to revoke the certification of employee organizations who fail to timely pay the recertification election fee, the Board issues the following:

III. ORDER

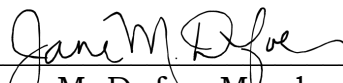
IT IS HEREBY ORDERED that the certification of Warren County Prosecuting Attorneys Association as the exclusive bargaining representative for the bargaining unit of Warren County employees described above is hereby REVOKED pursuant to Iowa Code section 20.25(6) and PERB subrule 15.5(5).

DATED at Des Moines, Iowa, this 8th day of October, 2021.

PUBLIC EMPLOYMENT RELATIONS BOARD



Erik M. Helland, Chair



Jane M. Dufoe, Member

Electronically filed.
Parties served via eFlex.