

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

| | | |
|----------------------------------|---|-----------------|
| IN THE MATTER OF: |) | |
| |) | |
| GRINNELL-NEWBURG COMMUNITY |) | |
| SCHOOL DISTRICT, |) | |
| Public Employer, |) | |
| |) | CASE NO. 102623 |
| and |) | |
| |) | |
| GRINNELL-NEWBURG PHYSICAL |) | |
| PLANT EMPLOYEES, |) | |
| 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 Grinnell-Newburg Physical Plant Employees (Employee Organization) to show cause why its 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. Troy Schilder appeared on behalf of the Employee Organization. Aaron Hilligas 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 Grinnell-Newburg Physical Plant Employees (Employee Organization) in 1976 (PERB Case No. 468) as the exclusive bargaining

representative for the following bargaining unit of Grinnell-Newburg Community School District employees:

INCLUDED: All housekeepers, custodians, boiler operators, maintenance personnel, head custodians and foremen.

EXCLUDED: Physical plant supervisor, all professional employees, bus drivers, cooks, all other employees and all those excluded by Section 4 of the Act.

The current collective bargaining agreement between the District 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-0290, 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, Troy Schilder testified on behalf of the Employee Organization. Schilder testified he mailed the election fee payment to PERB on September 4, 2021, by regular U.S. mail. He affixed postage to the envelope and dropped it off in an outgoing mailbox. On September 14, PERB informed Schilder that it had not received the election fee

payment from the Employee Organization. Schilder informed PERB that he had mailed it. A few days after, Schilder indicated that his mailed payment was returned because he had an incorrect mailing address for PERB. Schilder did not save a copy of the returned envelope. He did not have any other physical evidence to show the postmark date on the returned envelope. Schilder subsequently mailed another payment to PERB. The agency received the second mailed payment on September 23, containing a check dated September 4. The postmark date affixed to the envelope was September 21.

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 Grinnell-Newburg 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, such as a returned envelope. In this instance, the Employee Organization mailed the payment on time, but it was returned by the post office due to an incorrect address. However, the Employee Organization did not have a copy of the returned envelope. 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

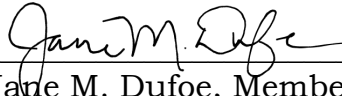
IT IS HEREBY ORDERED that the certification of Grinnell-Newburg Physical Plant Employees as the exclusive bargaining representative for the bargaining unit of Grinnell-Newburg Community School District described above is hereby REVOKED pursuant to Iowa Code section 20.25(6) and PERB subrule 15.5(5).

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.