

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF:)) SCOTT COUNTY, IOWA,)) Petitioner/Public Employer,)) And)) SCOTT COUNTY CORRECTIONS AND) COMMUNICATIONS ASSOCIATION/) TEAMSTERS LOCAL NO. 238,)) Intervenor/Employee Organization.))	Case No. 8540
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DECLARATORY ORDER

This matter comes before the Public Employment Relations Board (the Board or PERB) upon Scott County, Iowa's (the County) petition for a declaratory order filed on July 6, 2012. The Board subsequently granted the petition for intervention of Scott County Corrections and Communications Association/Teamsters Local No. 238 (the Union). Counsel for the parties¹, on behalf of their respective clients, submitted briefs addressing the questions presented.

Iowa Code section 17A.9(2) requires agencies to adopt rules providing for the form, contents, and filing of petitions for declaratory orders, and for their prompt disposition. Accordingly, PERB adopted chapter 10 of its rules, which governs declaratory order proceedings before this agency. No evidentiary hearings are held or factual determinations made in such proceedings -

¹James Hanks for the County and Jill Hartley for the Union.

instead, any declaratory order issued is based solely upon the facts specified in the petition.

The County's petition sets out a number of purported facts, representing that the County and the Union were engaged in negotiating a successor to their collective bargaining agreement in effect from July 1, 2006, through June 30, 2012. According to the petition, the County Board of Supervisors designated Mary Thee, an employee of the County, as its chief negotiator and authorized her to serve as its bargaining representative. No member of the Board of Supervisors was designated to serve as a bargaining representative or member of the bargaining team for the purpose of bargaining with the Union.

The petition represents that a Union representative communicated with a member of the Board of Supervisors regarding the authority of Ms. Thee as the bargaining representative of the County and that a Union representative attempted to negotiate with members of the Board of Supervisors. It is unclear from the petition if these conversation(s) occurred simultaneously or if multiple Union representatives were involved. The petition also recites that a Union representative advised Ms. Thee that the Union may negotiate or attempt to negotiate directly with a member of the Board of Supervisors because Ms. Thee is an employee of the County. Again, it is unclear if this was the same Union representative engaged in the conversation(s) with the members of the Board of Supervisors.

The petition does not specify the dates of the parties' negotiations or if they are ongoing, when the alleged communication(s) between the Union

representative(s) and the members of the Board of Supervisors occurred, or the date of the Union representative's statement to Ms. Thee. According to the petition, the County seeks a declaratory order to establish its right to select its bargaining representative without interference by the Union and to provide guidance to the parties regarding the role of the Board of Supervisors and its bargaining representative in the process of collective bargaining.

The County's petition poses three specific questions:

(1) Whether it is a prohibited practice for a representative of the [Union] to communicate directly with a member of the Board of Supervisors of the County with regard to the authority of the bargaining representative designated by the County Board for purposes of collective bargaining.

(2) Whether it is a prohibited practice for a representative of the [Union] to negotiate or attempt to negotiate directly with a member of the Board of Supervisors of the County when the Board of Supervisors has designated an individual to serve as the bargaining representative for the County and when that member of the Board of Supervisors is not the County's bargaining representative.

(3) Whether the prohibition stated in [Iowa Code section 20.17(9)] ("A public employee or any employee organization shall not negotiate or attempt to negotiate directly with a member of the governing board of a public employer if the public employer has appointed or authorized a bargaining representative for the purpose of bargaining with the public employees or their representative, unless the member of the governing board is the designated bargaining representative of the public employer") is applicable regardless of the employment status of the bargaining representative selected by the public employer.

In its petition for intervention, the Union disputes a number of the purported facts contained in the County's petition, including the content and

context of the communications between the Union representative(s) and members of the Board of Supervisors and between the Union representative(s) and Ms. Thee. The Union states that the alleged communications occurred early in 2012 and are not ongoing. It also states that negotiations for a collective bargaining agreement effective July 1, 2012, have concluded and that negotiation for a successor agreement have not yet commenced. The Union urges the Board to decline to issue a declaratory order pursuant to PERB paragraphs (b), (e), (f), and (h) of subrule 621—10.9(1) for questions 1 and 2 and paragraph (b) for question 3.

QUESTIONS 1 AND 2

In questions 1 and 2, the County requests a Board determination on whether certain conversations, which allegedly occurred while the parties were negotiating a successor collective bargaining agreement, constitute prohibited practices. Because questions 1 and 2 would be more appropriately addressed in a different type of proceeding and the questions are based solely upon prior conduct in an effort to establish the effect of that conduct, the Board declines to issue a declaratory order on those questions pursuant to paragraphs (e) and (h) of subrule 621—10.9(1).

First, paragraph (e) contemplates the Board's refusal to issue a declaratory order where "[t]he 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." This reason is fully applicable to questions 1 and 2, of which specifically ask the Board to determine whether particular conduct

is a prohibited practice. The questions are based on purported conduct that occurred while the parties were negotiating a successor collective bargaining agreement. The content and context of the prior conduct is in dispute.

As stated above, declaratory order proceedings do not include evidentiary hearings or factual determinations as do proceedings on prohibited practice complaints filed in accordance with chapter 3 of the PERB rules. Because questions 1 and 2 seek resolution of issues based upon contested facts, the Board thinks the issues addressed in these questions are best suited for resolution in a prohibited practice proceeding, where an evidentiary hearing is held and factual determinations are made.

Second, paragraph (h) of subrule 621—10.9(1) provides that the Board may refuse to issue a declaratory order where “[t]he 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.” This ground is also fully applicable here.

Questions 1 and 2 of the County’s petition do not challenge any prior PERB decision; rather, they attempt to establish that prior conduct (*i.e.* the conversations between Union representative(s) and members of the Board of Supervisors and Ms. Thee) constituted a prohibited practice. Thus, the petition is seeking a ruling to establish the effect of prior conduct rather than to aid in the planning of future conduct, and the Board accordingly thinks it inappropriate to issue a declaratory order on these questions

Although other subrule 621-10.9(1) reasons for declining to issue a declaratory order on questions 1 and 2 may also be present, the Board finds it unnecessary to consider the application of additional grounds where, as here, ample reasons militating against the issuance of a declaratory order are already apparent.

For these reasons, the Board declines to issue a declaratory order on questions 1 and 2 as requested by the County's petition.

QUESTION 3

The County's third question asks the Board to determine whether the prohibition stated in [Iowa Code subsection 20.17(9)] is applicable regardless of the employment status of the bargaining representative selected by the public employer. The answer to this question is "yes."

Subsection 20.17(9) provides that:

A public employee or any employee organization shall not negotiate or attempt to negotiate directly with a member of the governing board of a public employer if the public employer has appointed or authorized a bargaining representative for the purpose of bargaining with the public employees or their representative, unless the member of the governing board is the designated bargaining representative of the public employer.

This provision is clear and unambiguous. A public employee or employee organization cannot negotiate or attempt to negotiate directly with a member of a governing board of a public employer (*e.g.* Board of Supervisors) if two conditions are met: (1) the public employer has designated a bargaining representative and (2) that bargaining representative is not a member of the

governing board. Nothing in this provision, or elsewhere in chapter 20, so much as suggests that this prohibition is inapplicable if the designated representative is an employee of the public employer. Thus, a plain reading of subsection 20.17(9) requires an employee or employee organization to negotiate with the employer's designated bargaining representative, regardless of the employment status of that individual.

Therefore, the answer to question 3 is "yes."

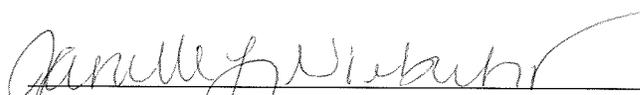
CONCLUSION

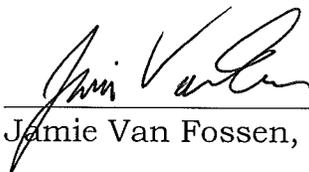
For the reasons stated above, the Board declines to issue a declaratory order on questions 1 and 2 as raised in the petition and answers question 3 in the affirmative.

DATED at Des Moines, Iowa, this 16th day of November, 2012.

PUBLIC EMPLOYMENT RELATIONS BOARD

By: 
James R. Riordan, Chair


Janelle L. Niebuhr, Board Member


Jamie Van Fossen, Board Member

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