

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF:)) AFSCME IOWA COUNCIL 61,) Petitioner/Employee Organization,)) and)) STATE OF IOWA (DEPARTMENT OF) ADMINISTRATIVE SERVICES),) Intervenor.)	Case No. 8573
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RULING

This matter comes before the Public Employment Relations Board (the Board or PERB) upon AFSCME Iowa Council 61's (the Union) petition for a declaratory order filed on October 22, 2012. The Board subsequently granted the petition for intervention of the State of Iowa (Department of Administrative Services). The parties declined to submit briefs in this matter, and therefore, PERB considers the matter on the pleadings.

Iowa Code subsection 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. Instead, any declaratory order issued is based solely upon the facts specified in the petition.

The Union's petition sets out a number of purported facts, representing that the Union and the Iowa Judicial Branch, through the State Court

Administrator, are parties to a collective bargaining agreement effective from July 1, 2011, through June 30, 2013. Included in this agreement are provisions explicitly addressing and outlining health insurance benefits and plans available to employees covered by the agreement. The Executive Branch and the Department of Administrative Services (DAS), in particular, are not parties to the collective bargaining agreement between the Judicial Branch and the Union.

According to the Union's petition, on or about July 2, 2012, the Executive Branch, through DAS, unilaterally changed the health insurance benefits contained in the collective bargaining agreement between the Judicial Branch and the Union by establishing a new enrollment period, adding new health insurance plan descriptions, and changing premium amounts and/or percentage contributions by employees. The petition represents that neither the Union nor the State Court Administrator consented to any modification of the affected collective bargaining provisions.

In its petition for intervention, DAS counters that no third-party modified the collective bargaining agreement between the Judicial Branch and the Union as the open enrollment periods, the health insurance plans, health benefit offerings, and all premium percentages or amounts owed by employees as set forth in the agreement remain unchanged. DAS further states that it administers the health insurance plans for the Judicial Branch.

The Union requests a declaratory order on the following questions:

- (a) whether a non-party to a collective bargaining agreement can unilaterally establish a new insurance

benefits enrollment period when the current collective bargaining agreement explicitly includes an enrollment period;

(b) whether a non-party to a collective bargaining agreement can unilaterally change insurance benefits by providing for new services such as preventative health when the current collective bargaining agreement explicitly describes health insurance plans; and

(c) whether a non-party to a collective bargaining agreement can increase an insurance premium that an employee would have to voluntarily pay when the collective bargaining agreement explicitly states the premium percentages or amount owed by employees.

In its petition, the Union acknowledges that “[t]here are current questions pending before PERB regarding unilateral changes of a mandatory topic of bargaining contained in the collective bargaining agreement by a party to that agreement.” Union’s Petition, at ¶15 (citing *UE Local 893/IUP & State of Iowa (Dep’t of Admin. Servs.)*, Case No. 8542; *AFSCME Iowa Council 61 & State of Iowa (Dep’t of Admin. Servs.)*, Case No. 8544; *State Police Officers Council & State of Iowa (Dep’t of Admin. Servs.)*, Case No. 8546). The Board notes these cases were filed as prohibited practice complaints and concern a purported unilateral change to health insurance benefit provisions in contracts between the Executive Branch and three different certified employee organizations, one being the Union. PERB consolidated the three proceedings on September 27, 2012. DAS points out that the disputed factual underpinnings and many of the legal arguments of this matter are also at issue in the consolidated cases, and therefore PERB should decline to issue a declaratory order in this matter.

Paragraph (d) of PERB subrule 621—10.9(1) contemplates the Board's refusal to issue a declaratory order where "[t]he questions presented by the petition are also presented in a current rule-making, contested case or other agency or judicial proceeding that may definitively resolve them." The Board may also refuse to issue a declaratory ruling 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." Iowa Admin. r. 621—10.9(1)(e). These reasons are fully applicable to the questions presented in this matter.

The underlying facts of this matter as well as certain legal questions are intricately intertwined with those submitted in the consolidated prohibited practice proceedings cited above. At issue in the consolidated cases is whether DAS's July 2 action constituted a prohibited practice by unilaterally changing a mandatory topic contained in the collective bargaining agreement between the Executive Branch and the Union. The answer to this question may definitively resolve the questions presented in this matter. Due to the intimacy of the questions presented in this case with issues raised in the consolidated cases, it would be inappropriate for the Board to issue a declaratory order.

Moreover, the questions presented in this matter would be more properly resolved in a prohibited practice proceeding. Based on the pleadings, a dispute exists as to whether DAS's July 2 action concerning health insurance amounted to prohibited unilateral changes to a mandatory topic of bargaining contained in the Judicial Branch contract. This dispute appears to arise, in

part, due to contested facts. 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 the questions presented seek resolution of issues based in part 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.¹

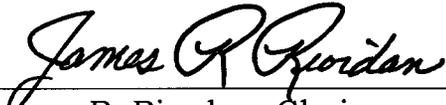
Although other subrule 621-10.9(1) reasons for declining to issue a declaratory order may also be present, the Board finds it unnecessary to consider the application of additional grounds where, as here, ample reasons militating against the issuance of a declaratory order are already apparent.

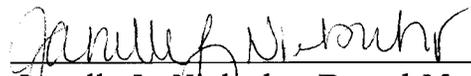
For these reasons, the Board declines to issue a declaratory order on the questions set forth in the Union's petition.

¹ The Union implicitly acknowledges as much. As noted previously, it filed a prohibited practice complaint against DAS for the same conduct as it related to the collective bargaining agreement between the Executive Branch and the Union. See *AFSCME Iowa Council 61 & State of Iowa (Dep't of Admin. Servs.)*, Case No. 8544. The only factual difference between this matter and the previously filed prohibited practice complaint is the contract involved.

DATED at Des Moines, Iowa, this 30th day of November, 2012.

PUBLIC EMPLOYMENT RELATIONS BOARD

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