

**STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD**

IN THE MATTER OF:)
)
STATE OF IOWA (DEPARTMENT OF)
ADMINISTRATIVE SERVICES),)
Petitioner/Public Employer,)
)
and)
)
AFSCME IOWA COUNCIL 61,)
Certified Employee Organization/)
Intervenor.)
)

Case No. 8655

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PUBLIC EMPLOYMENT
RELATIONS BOARD

DECLARATORY RULING

This matter comes before the Public Employment Relations Board (the Board or PERB) upon the State of Iowa's (Department of Administrative Services) petition for a declaratory order filed on May 22, 2013. The Board subsequently granted the request for additional time to intervene filed by AFSCME Iowa Council 61 (AFSCME). AFSCME has now filed a petition for intervention, which is hereby GRANTED. Council for the parties,¹ on behalf of their respective clients, submitted briefs addressing the questions presented.

Iowa Code section 17A.9(2) (2013) 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

¹ T. Ryan Lamb for the State and Mark Hedberg for AFSCME.

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

The State's petition sets out a number of purported facts, representing that the State and AFSCME are parties to two collective bargaining agreements: one effective from July 1, 2011, until June 30, 2013; and a second effective from July 1, 2013, until June 30, 2015. Both agreements contain identical dues termination language in Article II, Section 2.C. It provides:

Such orders shall be terminable with written notice to the Employer and the Union either between June 15th and June 30th of the second or last year of each Agreement or within a two (2) week period following the anniversary date of the employee's authorization to withhold dues. The Employer agrees not to hold requests to terminate authorization for payroll dues deduction. Such deductions shall cease within sixty (60) calendar days from receipt of the employee's notice to terminate dues deduction.

The State has recently received requests to terminate dues deductions from state employees who are members of AFSCME. These requests were made outside of the timeframes set forth in Article II, Section 2.C of both collective bargaining agreements.²

The State seeks a declaratory order on the following specific questions:

1. Does the language regarding the termination of union dues contained in Article II, Section 2.C of the [collective bargaining agreements] conflict with Iowa law?
2. If the above-referenced section in the [collective bargaining agreements] conflicts with Iowa law, should the [State] abide by the law and allow for the termination of dues deduction in accordance with Iowa Code sections 20.9 and 70A.19 unless

² According to the petition, the State attempted to negotiate a change to Article II, Section 2.C during negotiations for the 2013-2015 agreement, but was unsuccessful.

and until the [State] and AFSCME are able to negotiate and agree to a modification to the [collective bargaining agreement] that brings it into conformance with Iowa law?

The State requests the Board answer the questions presented in the affirmative. AFSCME does not dispute these facts, but urges the Board to answer the questions presented in the negative.³

Before discussing the merits of the petition, the Board must first address a seemingly forgotten matter at the core of every declaratory order petition filed with PERB: whether it should rule on the issue. Here, the issues center not on chapter 20 provisions, but instead on sections 70A.19 and 731.5 of the Iowa Code and administrative rule 11—70.6(20)(5). The Board has express authority to “[i]nterpret, apply, and administer the provisions of [chapter 20].” Iowa Code § 20.6 (2013). But the Board is unaware of any statutory provision which grants it like authority to interpret sections 70A.19 and 731.5 or rule 11—70.6(20)(5).⁴

That being said, the Board must nonetheless recognize any statute that unambiguously trumps a chapter 20 provision. Section 70A.19 provides that:

With respect to state employees, this section supersedes the provisions of section 20.9 allowing termination of a dues checkoff at any time but does not supersede the requirement for thirty days’ written notice of termination.

³ In support of its petition, the State submitted the affidavits of Mike Carroll and Eddie Jones. AFSCME then filed motions to strike the affidavits, arguing the allegations contained in the affidavits were not relevant to the pending matter and should have been raised in alternate proceedings. The motions to strike are GRANTED, but not for the reasons articulated in AFSCME’s motions. Because declaratory order proceedings are not contested cases, the Board does not consider evidence like these affidavits, but instead bases its order on the facts pled in the petition.

⁴ Interestingly, AFSCME does acknowledge the Board’s limited authority on page 5 of its brief, but only as it relates to PERB’s authority to interpret this DAS rule.

The State's petition sets forth the fact that *state* employees have requested termination of their dues checkoff. Section 70A.19 makes significant portions of section 20.9 inapplicable to state employees. Despite artful craftsmanship, the questions presented do not require the exercise of PERB's authority to interpret, apply, and administer chapter 20.⁵

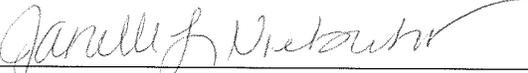
Paragraph (c) of PERB rule 621—10.9(1) contemplates the Board's refusal to issue a declaratory order where "[t]he board does not have jurisdiction over the questions presented in the petition." Moreover, paragraph (e) provides that the Board may refuse to issue where "[t]he questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter." These grounds are fully applicable here. Given the Board's limited interpretive authority, a declaratory order on the real questions presented would be of little value. Some other body with the authority to reconcile the purported conflicts between the contract provision, sections 70A.19 and 731.5, and rule 11—70.6(20)(5) is the proper venue for this petition. Consequently, the Board declines to issue a declaratory order on the questions presented by the State's petition.

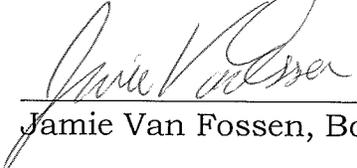
DATED at Des Moines, Iowa, this 28th day of June, 2013.

⁵ While the Board may, in the context of a contested case proceeding, be required to interpret statutory provisions outside chapter 20 in order to resolve an issue which does arise under the statute, its interpretation of such provisions is not entitled to judicial deference, unlike its interpretation of the provisions of chapter 20 itself.

PUBLIC EMPLOYMENT RELATIONS BOARD

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