

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

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SHAHABODDIN MOHAMMAD ELAHI,	)	
Complainant,	)	Case No. 8663
	)	
and	)	
	)	
AFSCME IOWA COUNCIL 61,	)	
Respondent.	)	
	)	

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**DECISION ON APPEAL**

This case is before the Public Employment Relations Board (PERB or Board) upon Complainant Shahaboddin Mohammad Elahi's appeal of an administrative law judge's (ALJ) proposed decision and order dated January 30, 2014, concerning a prohibited practice complaint filed by Elahi against AFSCME Iowa Council 61 pursuant to Iowa Code section 20.11. Following an evidentiary hearing, the ALJ concluded that Elahi had failed to establish that AFSCME committed a prohibited practice and proposed dismissal of the claims.

Pursuant to PERB subrule 621—9.2(3), the Board has heard the case upon the record submitted before the ALJ. Elahi, representing himself, and counsel for AFSCME, Mark Hedberg, presented their oral arguments to the Board on May 21, 2014. Prior to oral arguments, the parties filed briefs outlining their respective positions.

In this appeal, the Board possesses all powers it would have possessed had it elected, pursuant to PERB rule 621—2.1(20), to preside at the evidentiary hearing in place of the ALJ. Based upon its review of the record

before the ALJ, and having considered the parties' oral arguments and briefs, the Board agrees with the outcome of the ALJ's proposed decision and order, but disagrees with his findings of fact and conclusions of law. Therefore, the Board makes the following:

#### FINDINGS OF FACT

The City of Waterloo is a public employer within the meaning of Iowa Code section 20.3(10). AFSCME Iowa Council 61 is an employee organization within the meaning of Iowa Code section 20.3(4) and was certified by PERB as the exclusive bargaining representative of a bargaining unit consisting of certain employees of the City of Waterloo on September 25, 2012.<sup>1</sup> The bargaining unit included employees in the professional job classifications of Associate Engineer, Traffic Engineer, Programmer Analyst, Associate Planner, Planner I, Planner II, and Storm Water Specialist. At all relevant times, Elahi, as the City's sole Traffic Engineer, was included in the unit and was thus represented by AFSCME for purposes of bargaining and contract grievances.

On October 5, 2012, Jamie Knutson, an Associate Engineer for the City of Waterloo and a bargaining unit member, emailed the entire bargaining unit, including Elahi, seeking assistance in preparation for collective bargaining.<sup>2</sup> Knutson had led the organizing efforts and became the *de facto* contact person

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<sup>1</sup> Elahi complains that he did not receive all information pertaining to the bargaining unit determination and representative certification proceedings prior to AFSCME's certification. But this has no bearing on this case because AFSCME had no duty to fairly represent Elahi until after its certification as the exclusive bargaining representative. See Iowa Code § 20.17(1).

<sup>2</sup> Elahi alleges that an email, in addition to the October 5 email, was sent about forming the bargaining team. As evidence, he cites a conversation with another bargaining unit member at the ratification meeting in June 2013. Elahi did not produce this purported email and the other bargaining unit member did not testify at hearing. The Board will not find that an additional email was sent absent corroborating evidence.

between AFSCME and unit members. Knutson asked for items the members would like included in the contract and a volunteer to compile past wage increases and insurance costs. He also requested that “3 or 4 folks meet with [Earlene Anderson, the AFSCME bargaining representative] on October 18th after work to discuss the items that we come up with” and asked that persons interested in attending let him know. Finally, Knutson notified the members that he would be collecting job descriptions and salaries from other cities “so that we will have some comparables.”<sup>3</sup> At least one unit member, Shane Graham, interpreted Knutson’s email as an invitation to be on the bargaining team. Later that day, Elahi replied, volunteering to compile the data on raises and insurance and suggesting cities that may have comparable traffic engineer positions. He also stated that he would like to attend the October 18 meeting. There is no evidence that Knutson responded to Elahi or that the two had any further communications regarding the October 18 meeting.

One week later, on October 12, 2012, Knutson emailed Elahi, asking him to review several job descriptions attached to the email and determine which descriptions best matched his job duties. Knutson followed this process for each job classification in the unit, emailing the employee within a specific job classification the other cities’ job descriptions for similar positions and asking

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<sup>3</sup> “Comparable rate” is defined as “rates used in wage negotiations where it is necessary to compare identical or similar occupations or occupations with similar job characteristics. These may be within the same plant or in other plants in the community or the industry. The comparison of such rates where agreement is reached on the jobs to be compared may provide a basis for settlement where individual job classifications are being considered in wage negotiations.” *Roberts’ Dictionary of Indus. Relations* 83 (2d ed. 1971). See also Iowa Code § 20.22(7)(b) (requiring interest arbitrators to consider the “wages, hours and conditions of employment of the involved public employees with those of other public employees doing comparable work . . .”).

him to determine which description(s) matched best. Knutson did this because Waterloo's position descriptions were not available on the City's website and he did not have the descriptions at that time.

Later that day Elahi replied that "[t]he closest job description is a mixture of all three positions for Cedar Rapids." These three positions were Project Engineer II – Traffic (Traffic Engineer), Traffic Engineering Manager/City Traffic Engineer, and Traffic Engineering Project Administrator. Elahi did not enter complete copies of these position descriptions into evidence, and the Board is unable to determine the required education level or certifications for the positions. What can be gleaned from the exhibit admitted into evidence is that at least one of the positions (Traffic Engineering Manager/City Traffic Engineer) is a management level position and that all three positions are not included in a bargaining unit.

Elahi did not attend the October 18 meeting. Persons who attended became the members of the bargaining team.

The bargaining team tried to base comparability groups on the responses received from the job description survey sent to the unit members on or about October 12 but found it difficult because each city had different requirements and duties for similar jobs. Some positions included as comparable to the Traffic Engineer position did not require an engineering degree or were non-professional positions. On the other hand, the bargaining team excluded management positions and those requiring a professional engineering (P.E.) license. Because the bargaining team did not have a copy of the Waterloo

Traffic Engineer position description and because Elahi did not have a P.E. license, they did not know that the Waterloo Traffic Engineer position technically required a P.E. license.<sup>4</sup>

The following table sets out the positions included in the bargaining team’s comparability group for the Traffic Engineer position with their respective wage ranges and median salary.

<b>City</b>	<b>Position Title</b>	<b>Low</b>	<b>High</b>	<b>Median</b>
Des Moines	Traffic Analyst	\$49,233.60	\$58,926.40	\$54,080.00
Cedar Rapids	Traffic Project Coordinator	\$40,456.00	\$55,515.00	\$47,985.50
Cedar Rapids	Traffic Project Administrator*	\$46,800.00	\$64,272.00	\$55,536.00
Cedar Rapids	Traffic Engineer*	\$65,852.80	\$90,417.60	\$78,135.20
Sioux City	Transportation Planner	\$52,763.93	\$73,869.50	\$63,316.72
Iowa City	Planner Traffic Engineering	\$51,376.00	\$64,667.20	\$58,021.60
Ames	Traffic Engineer	\$56,243.20	\$83,260.74	\$69,751.97

The spreadsheet listing the comparables for the Traffic Engineer position also noted that positions from Davenport, Council Bluffs, Dubuque, and West Des Moines were not applicable or not available. The average median salary for the listed positions was \$60,975.28. Elahi’s salary at the time was \$68,952.00.<sup>5</sup>

In addition to salaries, the bargaining team deemed important the following topics: insurance, grievance procedures, and discipline and discharge. They understood that they may not be able to fully realize all of

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<sup>4</sup> The record does not reveal why the City was not enforcing this requirement as to Elahi.

<sup>5</sup> In his response to the job description survey, Elahi had stated that the two positions marked with an asterisk (\*) in part comprised his job duties. The third, a management position, was excluded from the comparability group.

their priorities in their first contract with the City and that it may take several contracts to reach state-wide salary averages for all positions in the unit.

Anderson drafted AFSCME's initial offer, which sought a \$4,000.00 salary increase for all positions and included proposals on insurance, grievance procedures, and discipline and discharge. After the City presented its initial offer, the parties engaged in closed-session bargaining, beginning with language items and then moving onto economic items. During this time period, Knutson sent at least one email to the unit members, updating them on the progress made during bargaining.

On March 6, the parties bargained wages. Bargaining team members felt they had to justify the higher salary schedule sought and therefore shared the comparables they had gathered. After the City looked at AFSCME's comparability data, the City stated that its information, although smaller in quantity, was similar to AFSCME's. The City then presented a salary schedule as its final offer on wages. It covered a three-year period and set the ranges for the Traffic Engineer position at \$52,000.00 to \$58,526.00 in year 1; \$53,560.00 to \$60,282.00 in year 2; and \$55,166.00 to \$62,090.00 in year 3.

Recognizing that Elahi's then-current salary exceeded the salary schedule's Traffic Engineer ranges, AFSCME and the City agreed that he would not be paid per the schedule and would receive percentage raises during each year of the contract (2.1%, 2.9%, and 3.0%, respectively). Anderson believed this was acceptable because Elahi was the only Traffic Engineer and he would still receive raises in each year. Anderson reasoned that if the salary schedule

was too low to hire a Traffic Engineer in the future, a new schedule could be bargained at that time. Anderson also believed that Elahi being paid in excess of the salary schedule would help the union in future bargaining should the City hire another Traffic Engineer.

Because the offer made by the City overall furthered the interests of the bargaining unit, Anderson signed a tentative agreement on behalf of AFSCME and the bargaining team. The tentative agreement included the City-developed salary schedule and proposals on insurance, grievance procedures, and discipline and discharge as well as the specifics concerning Elahi's wage percentage increases. Both parties acknowledged that the final salary schedule was a "work in progress." Knutson then emailed all unit members with the tentative agreement, including the salary schedule.

A disappointed Elahi replied that the Traffic Engineer salary was unreasonably low and that he wanted to be on the bargaining team. Shane Graham, a member of the bargaining team, responded to Elahi that bargaining had concluded. A series of emails between Elahi and Knutson and Anderson were then exchanged with Knutson and Anderson attempting to explain that Elahi was "red-circled" and would be paid above the schedule, that bargaining on this topic was concluded, and that the bargaining team would not ask the City to renegotiate the position's salary. Both Knutson and Anderson shared some of their reasoning for the decisions made when bargaining the Traffic Engineer salary.

Through the exchange of the emails between Elahi and Knutson, it is evident that Knutson and Elahi disagreed about the value of a P.E. license and that Knutson was not aware that the Traffic Engineer position actually required a P.E. license. For example, in one exchange, Knutson wrote:

The City has decided to start me ahead in the steps since I do have my P.E. license. This is what the city decided to do. The City recognizes the fact that a P.E. license should be paid more. Currently I am not making as much as you and you don't have your P.E. is that fair? I am not arguing whose job is more important. That is not the point of this.

**Is a P.E. required in your current job description?** If it is and you don't have it, the City could fire you right this minute because you do not meet the requirement of the job description. The City said they will not use salaries with a P.E. license when looking at your job because you don't have one. That is neither good or bad but you are wanting to be paid for something that you don't have.<sup>6</sup>

Also through these emails, Elahi provided several job descriptions he felt were better comparables than those chosen by the bargaining team. Knutson testified that he became defensive when Elahi confronted him via email because he was frustrated that Elahi's information came to light after they had reached an agreement with the City.

AFSCME did not ask the City to renegotiate the Traffic Engineer's salary, but the parties' representatives did correspond regarding the comparability issue for the position. The City's attorney explained its approach to determining comparability and wrote that the City believed that the Traffic Engineer position was fairly compensated based upon available information.

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<sup>6</sup> Quotation as authored and presented [sic].

This statement confirmed to Anderson that asking the City to renegotiate the Traffic Engineer salary was futile.

At hearing, Anderson explained her concerns with asking the City to renegotiate the Traffic Engineer's salary. She reiterated that requesting renegotiation on the Traffic Engineer's salary would put the entire tentative agreement at risk and possibly result in interest arbitration. She stated that going to interest arbitration potentially nullifies agreements reached on permissive topics, such as discipline and discharge, and potentially excludes them from the contract. Interest arbitration also results in a one-year contract, absent agreement of the parties to a longer term, and therefore a bargaining unit cannot lock in insurance rates and salaries for a more extended period. Anderson did not believe the risk of dismantling the entire agreement and facing interest arbitration outweighed Elahi's desire to increase the Traffic Engineer's salary schedule.

Anderson further testified that she believes that withdrawing a tentative agreement prior to a ratification vote amounts to bad-faith bargaining. In her time as a bargaining representative, she has never asked an employer to renegotiate after a tentative agreement has been reached and has only seen it done under extraordinary circumstances (*i.e.* layoff procedures following the 2008 flood in Cedar Rapids where entire work-sites were destroyed).

#### CONCLUSIONS OF LAW

Elahi alleges that AFSCME breached its duty of fair representation to the Traffic Engineer position by excluding him from the bargaining process,

choosing unreasonably low comparable salaries for the position, and refusing to ask the City to renegotiate the salary for the position.

The duty of fair representation arises from Iowa Code section 20.17(1), which provides in relevant part that “the employee organization certified as the bargaining representative shall be the exclusive representative of all public employees in the bargaining unit and shall represent all public employees fairly.” A breach of the employee organization’s duty of fair representation constitutes a prohibited practice within the meaning of Iowa Code section 20.10(3)(a). *See, e.g., Steffensmeier & AFSCME/Iowa Council 61*, 05 PERB 6637; *O’Hara & AFSCME/Iowa Council 61*, 02 PERB 5532. This subsection provides:

It shall be a prohibited practice for public employees or an employee organization or for any person, union or organization or their agents to:

(a) Interfere with, restrain, coerce or harass any public employee with respect to any of the employee’s rights under this chapter or in order to prevent or discourage the employee’s exercise of any such right, including, without limitation, all rights under section 20.8.

Iowa Code § 20.10(3)(a).

The duty of fair representation is a well-developed doctrine under federal labor law, and has been addressed in a number of cases under the Public Employment Relations Act. In the leading United States Supreme Court case, *Vaca v. Sipes*, 386 U.S. 171 (1967), the Court set out the basic standard for evaluating duty of fair representation claims and held that a plaintiff, in order to prevail, must prove that the union’s actions were arbitrary, discriminatory or

in bad faith. The *Vaca* standard was discussed and adopted by PERB in *Kenneth Ross and AFSCME/Iowa Council 61*, 85 PERB 2562. This standard was later adopted and codified by the Iowa legislature, and since 1991, Iowa Code section 20.17(1) has contained the following language:

. . . To sustain a claim that a certified employee organization has committed a prohibited practice by breaching its duty of fair representation, a public employee must establish by a preponderance of the evidence action or inaction by the organization which was arbitrary, discriminatory, or in bad faith.

The duty of fair representation has been described as “[a] statutory obligation to serve the interests of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct.” *Norton v. Adair County*, 441 N.W.2d 347, 351 (Iowa 1981) (quoting *Vaca*, 386 U.S. at 177).

Elahi maintains that he is not arguing that AFSCME unfairly represented him individually, but only that AFSCME breached its duty of fair representation to the Traffic Engineer position. While bargaining units are defined by job classifications or positions and not individuals’ names, it is not the positions to which a duty of fair representation is owed, but rather the employees who hold those positions. See Iowa Code § 20.17(1) (“[T]he employee organization certified as the bargaining representative shall be the exclusive representative of all public *employees* in the bargaining unit and shall represent all public *employees* fairly.” (emphasis added)). Consequently, regardless of how Elahi frames the issue, AFSCME’s duty of fair representation was to him as he is the only person who held a Traffic Engineer position at the

relevant times. To the extent he argues that his claims are on behalf of persons who may be employed as Traffic Engineers in the future, he does not have standing. In any event, Elahi has not met his burden to establish that any of AFSCME's conduct was arbitrary, discriminatory, or in bad faith.

#### I. Arbitrary

Elahi has not proven that AFSCME acted arbitrarily throughout the planning for and bargaining of the unit's first contract with the City. Arbitrary means "action taken without fair, solid, and substantial cause . . . [and] refers to action which will not stand the test of reason or principle." *Norton*, 441 N.W.2d at 358-59. "Arbitrary action has [also] been defined as a 'willful and *unreasonable* action, without consideration and in disregard of the facts or circumstances of the case.'" *Kunzman & Teamsters Local Union No. 828*, 05 PERB 6602 at 8 (quoting *Norton*, 441 N.W.2d at 358).

Elahi first cites the October 5 email as evidence that AFSCME acted arbitrarily before and during the bargaining process. He argues that one could not reasonably interpret the email as seeking volunteers for the bargaining team or that the composition of the bargaining team would be discussed at the October 18 meeting. However, at least one other member of the bargaining unit, Shane Graham, testified that that was exactly his interpretation. It was not so devoid of context that one could not understand that Knutson sought volunteers and that the October 18 meeting would include discussions about who would be representing the unit at the bargaining table. That Knutson could have made the email more clear about the purpose of the October 18

meeting does not constitute arbitrary action or a violation of AFSCME's duty of fair representation. *Rickerd & AFSCME Iowa Council 61*, 07 PERB 7019 at 16.

Nor has Elahi proven that Knutson's failure to reply to Elahi's response to the October 5 email was arbitrary. The record, at most, indicates that Knutson may have been negligent in the handling of that email. Mere negligence is insufficient to establish unfair representation. *Kunzman*, 05 PERB 6602 at 10. That the bargaining team was formed at the October 18 with Anderson was not arbitrary. It is logical that those who met with Anderson would also be those representing the unit at the bargaining table.

Elahi has also failed to establish that AFSCME acted arbitrarily when selecting the comparability group for the Traffic Engineer position. The bargaining team based its comparables on the response Elahi made to Knutson's October 12 email. Basing a comparability group off of an employee's description of his own job duties is perfectly reasonable, particularly when a job description is not readily available. In fact, two of the three positions that Elahi had indicated comprised his duties were included in the comparability group with the third excluded likely because it was a management position. Removing management positions from the comparability group is reasonable when no one in the bargaining unit is a manager.

Nor was it unreasonable for the bargaining team to exclude positions requiring a P.E. license. The bargaining team did not have a copy of the Waterloo Traffic Engineer position description and based its beliefs regarding job requirements on Elahi's response and Elahi's qualifications. Because Elahi

did not have a P.E. license, it was reasonable for the bargaining team to assume that the Traffic Engineer position did not require a P.E. license and that positions requiring a P.E. license would not be appropriate comparables.

That the bargaining team did not share its comparability list with Elahi prior to or during bargaining is not evidence that the team acted arbitrarily. Because it is common for a bargaining team, and not an entire unit, to develop comparability groups, the maintenance of such a practice is reasonable.

Perhaps in hindsight, some of the comparables should not have been included in the comparability group and other positions should have been. But as Anderson testified, finding comparables is not an exact science and can be subjective. It has long been held that bargaining representatives are given broad latitude in serving the units they represent. *Air Line Pilots Ass'n v. O'Neill*, 499 U.S. 65, 67 (1991) (citing *Ford Motor Co. v. Huffman*, 345 U.S. 330, 338 (1953)). That the bargaining team did not fully understand the duties of the Traffic Engineer and possibly chose poor comparables does not establish that AFSCME breached its duty of fair representation. *See, e.g., Kunzman*, 05 PERB 6602 at 10 (union's poor judgment or ineptitude is insufficient to prove a breach of the duty of fair representation). Under the facts and circumstances of this case, Elahi has not proven that AFSCME arbitrarily chose comparables.

Finally, Elahi argues that AFSCME unfairly represented him (or his position) by refusing to ask the City to renegotiate the Traffic Engineer salary. Anderson explained a litany of reasons why AFSCME should not and would not broach this subject with the City. She cited her concerns with nullifying the

tentative agreement in its entirety, risking interest arbitration which would result in a one-year agreement and could exclude discipline and discharge (one of the bargaining team's priorities) from the contract. She addressed concerns that a bad-faith bargaining claim could be leveled against the union. She discussed that Elahi, the person, would not be subject to a pay cut and that him being paid in excess of the scale could potentially be used as leverage in future contracts. She talked about the need to balance the interest of one person against the interests of the rest of the unit. *See, e.g., Ross, 85 PERB 2562 at 23* (in the context of negotiating, a union is not barred from making agreements which have unfavorable effects on some of the members of the unit represented). She also discussed the email exchange between City and AFSCME representatives which indicated that the City believed the Traffic Engineer position was being reasonably compensated and confirmed to her that asking to renegotiate the salary was futile. There is simply no evidence suggesting that AFSCME's decision on this matter was arbitrary.

## II. Discriminatory

Elahi has also failed to establish that AFSCME breached its duty of fair representation by discriminating against him. In the context of unfair representation claims, discrimination occurs when the union does not utilize the same decision-making process for all bargaining unit members. *Kunzman, 05 PERB 6602 at 10*. Here, there is no evidence that AFSCME treated Elahi differently than the rest of the unit members, utilized a different decision-

making process for the Traffic Engineer comparables, or approached the negotiation of the Traffic Engineer's salary in a different manner.

Elahi received the same emails as the rest of the unit members, including the October 5 email which announced the October 18 meeting with Anderson. There is no evidence that he was excluded from any email or information pertinent to bargaining prior to the bargaining team's formation on October 18.

The bargaining team arrived at the comparability group for the Traffic Engineer position in the same manner as the rest of the job classifications in the unit. The bargaining team considered unit members' descriptions of their respective job duties and used that information to develop the comparability groups. The actual Waterloo job descriptions were not used as a benchmark for any of the job classifications in the unit. For all job classifications, management positions were excluded from comparability groups.

When bargaining the contract, AFSCME treated Elahi and his position the same as the others in the unit. AFSCME sought a \$4,000.00 across-the-board raise for all job classifications and ultimately agreed to the City's final offer on wages for each job classification. The email exchanges between Elahi and Knutson do reveal a level of frustration on Knutson's part, but they do not show that Elahi (or his position) was being singled out. While the results are surely different between the Traffic Engineer position and the other positions, there is no discernable difference in the process that led to those results.

Elahi has also failed to show that he would have been treated differently had another unit member requested renegotiation of a contract term following the tentative agreement. No evidence suggests that AFSCME would have entertained a request from another unit member to seek renegotiation of an item after the tentative agreement was reached. In short, Elahi has not met his burden to prove AFSCME discriminated against him.

### III. Bad Faith

Likewise, Elahi has failed to establish that AFSCME acted in bad faith. Bad faith conduct is that which is fraudulent, deceitful or dishonest. *Kunzman*, 05 PERB 6602 at 10-11.

The October 5 email is not fraudulent, deceitful or dishonest. At most, it is poorly constructed and unclear. Nor has Elahi shown that Knutson intentionally disregarded Elahi's response to the October 5 email and chose not to reply to Elahi in an effort to deceive him. There is no evidence that AFSCME fraudulently chose comparables for the Traffic Engineer position or that AFSCME was dishonest when explaining why it would not ask the City to renegotiate the salary schedule for the position.

Again, the March and April email exchanges between Elahi and Knutson are evidence that Knutson was frustrated with Elahi's complaints after the tentative agreement was reached, but are not evidence that AFSCME was acting in bad faith at that time or at any point prior to or during the bargaining of the unit's first contract. Thus, Elahi has not proven that AFSCME unfairly represented him (or the Traffic Engineer position) under the bad faith standard.

But even if the Board had concluded that AFSCME acted arbitrarily, discriminatorily, or in bad faith when representing Elahi (or the Traffic Engineer position), which it does not, Elahi would not be entitled to any remedial relief in this case. He has failed to establish that the City would agree to renegotiate the Traffic Engineer pay scale or, if the City did renegotiate the pay scale, that the City would have agreed that the pay scale should be based on the comparables that Elahi advocates. Nor has he established that an interest arbitrator would have awarded his desired pay scale.

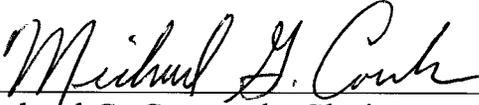
For the reasons stated above, the Board enters the following:

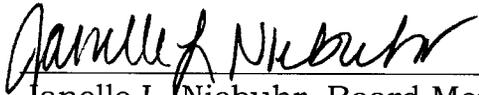
ORDER

Complainant Shahaboddin Mohammad Elahi's prohibited practice complaint is hereby DISMISSED.

DATED at Des Moines, Iowa, this 15th day of December, 2014.

PUBLIC EMPLOYMENT RELATIONS BOARD

By:   
Michael G. Cormack, Chair

  
Janelle L. Niebuhr, Board Member

  
Jamie Van Fossen, Board Member

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