

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

AFSCME IOWA COUNCIL 61, Complainant,)	
and)	Case No. 8693
STATE OF IOWA (DEPARTMENT OF CORRECTIONS), Respondent.)	

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RULING

Complainant AFSCME Iowa Council 61 has filed an “application to enforce order” with the Public Employment Relations Board (Board or PERB), requesting that the Board enforce a proposed decision and order issued by a PERB administrative law judge on June 25, 2014, which determined that the State had committed prohibited practices within the meaning of Iowa Code sections 20.10(1) and 20.10(2)(a), (e) and (f), and ordered an appropriate remedy. Pursuant to PERB administrative rule 621—9.1(20) and Iowa Code section 17A.15, the proposed decision and order became final agency action 20 days later when neither party filed an appeal with the Board. The application alleges that the State directly violated the order on November 3, 2014 when it posted bid sheets that did not provide specific work locations and shifts, as the order had required.

The State has denied it violated the order.

On December 15, 2014, the Board held a hearing pursuant to notice in accordance with the applicable provisions of Iowa Code chapters 17A and 20

and the rules of PERB. The purpose of the hearing was to provide the parties with an opportunity to present evidence and arguments relevant to the issues, which might aid the Board in deciding whether to seek judicial intervention to enforce the order pursuant to Iowa Code section 20.11(4).

The order provided in relevant part:

IT IS HEREBY ORDERED that the State of Iowa (Department of Corrections) rebid all positions posted on August 15 and August 27, 2013. All postings shall specifically identify the location (i.e., organizational unit), shift hours and days off that were missing from the August 15 and August 27 postings. In addition, the State (Department of Corrections) shall cease and desist from any further violations of Iowa Code sections 20.10(1) and 20.10(2)(a), (e) and (f).

The ALJ had held that the location (i.e. organizational unit) was the Iowa State Penitentiary. On the basis of the evidence received at hearing, the Board finds that the “postings” made on November 3 and 5, 2014¹ did not specifically identify the location (i.e. organizational unit) of the posted positions. While the State presented a version of the “bid sheets” which stated “NEW INSTITUTION REBID BEGINNING NOVEMBER 17, 2014,” thus arguably identifying the Penitentiary as the organizational unit, AFSCME witnesses testified and the Board finds that this version was never sent to the bargaining unit members (i.e. “posted”). Additionally, the Board does not believe that the text of the email to which the “bid sheets” were attached is properly viewed as a part of the posting contemplated by the ALJ’s order, and therefore the text of the November 3 and 5 emails does not cure this defect.

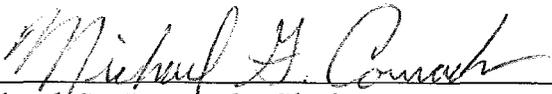
¹ AFSCME does not argue that postings must be physically made and that emails are not sufficient to constitute a posting.

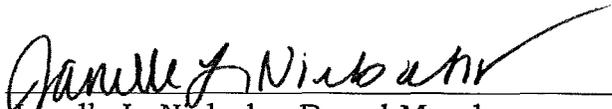
Nor did the postings specifically identify the shift hours for some positions as required by the order. On page 8 of the attachment to both its November 3 and 5 emails, the State included a list showing the shift hours for several of the positions being bid. However, some of the positions included in the bid sheets are not represented on this list (*e.g.* control center, perimeter). Two of the positions—transport officers and activities officers—list “hours as assigned” as their shift hours and a third—program officer—has two potential shift times. Bargaining unit members bidding for any of these positions would not know the shift times because those hours are not specifically identified as required by the ALJ’s order.

The Board, having reviewed the record and having considered the parties’ arguments, concludes that the State has not complied with the order dated June 25, 2014, and will petition the Polk County District Court for injunctive relief pursuant to Iowa Code section 20.11(4) and Iowa Rules of Civil Procedure 1.1501 to 1.1511.

DATED at Des Moines, Iowa, this 17th day of December, 2014.

PUBLIC EMPLOYMENT RELATIONS BOARD

By: 
Michael G. Cormack, Chair


Janelle L. Niebuhr, Board Member


Jamie Van Fossen, Board Member

Original filed.

Mailed and emailed copies to:

Mark Hedberg
100 Court Avenue, Suite 425
Des Moines, IA 50309
mark@hedberglaw.com

Jeffrey Edgar
Hoover State Office Building Level 3
1305 E. Walnut Street
Des Moines, IA 50319
Jeffrey.Edgar@iowa.gov