

The Board has reviewed the case upon the record submitted before the ALJ. It declined to hear oral arguments in the matter; however, Smith filed written arguments and supporting documentation outlining his position in a timely manner. The District declined to submit any further written arguments.

In this review, the Board possesses all powers it would have possessed had it elected, pursuant to PERB rule 621—2.1(2), to preside in place of the ALJ. Based upon its review of the record before the ALJ, and having considered the parties' arguments, the Board agrees with the ALJ's conclusion that Smith's complaint must be dismissed, but based upon somewhat different reasoning than that employed by the ALJ.

BACKGROUND

The relevant facts disclosed by the pleadings, the parties' other submissions, and official PERB records are not genuinely in dispute. In April 2011, Smith retired from the District following 28 years of employment. During his employment with the District, the Highland Education Association (the Association) represented certain employees of the District, including Smith, for purposes of collective bargaining. He had been an active member of the Association, serving as the rights chair for many years.

At the time of his retirement, the District did not offer an early retirement incentive program (ERIP), and therefore, Smith did not receive any incentive to retire in 2011 despite his request for one. The District had offered ERIPs in

prior years but had declined to do so in 2011.¹ The following fall Smith was elected to the District's school board.

In September 2013, following the negotiation and execution of a 2013-14 collective agreement between the District and the Association, the school board, of which Smith was still a member, voted to offer an ERIP to employees. One then-current employee accepted the ERIP offer. Smith requested that the District offer the 2013 ERIP benefits to him for his 2011 retirement. The District denied or ignored that request. Smith alleges that this denial violated the Equal Pay Act and Ledbetter Act, amongst other federal and state statutes, and is a continuation of the bullying, harassment, discrimination, and retaliation for his age, disability, and union activities he alleges he suffered while an employee of the District.

DISCUSSION AND ANALYSIS

Smith alleges in his complaint that the District engaged in prohibited practices within the meaning of sections 20.8 and 20.10(1), (2)(a), (2)(b), and (2)(d) by denying him the benefits offered with the 2013 ERIP. In subsequent filings, Smith further asks the Board to address claims arising under the Americans with Disabilities Act (ADA), the Age Discrimination in Employment Act (ADEA), the Equal Pay Act, and the Ledbetter Fair Pay Act.²

The provisions of Iowa Code chapter 20 alleged to have been violated provide, in relevant part:

¹ Smith filed a complaint with PERB in 2011 alleging that the District should have offered him a retirement incentive at the time of his retirement. He voluntarily withdrew this complaint prior to hearing. PERB Case No. 8387.

² Codified at 42 U.S.C. §§ 2000e, *et. al.*, and Iowa Code chapter 216.

20.8 Public employee rights.

Public employees shall have the right to:

1. Organize, or form, join, or assist any employee organization.
2. Negotiate collectively through representatives of their own choosing.
3. Engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection insofar as any such activity is not prohibited by this chapter or any other law of the state.
4. Refuse to join or participate in the activities of employee organizations, including the payment of any dues, fees or assessments or service fees of any type.

20.10 Prohibited practices.

1. It shall be a prohibited practice for any public employer, public employee, or employee organization to refuse to negotiate in good faith with respect to the scope of negotiations as defined in section 20.9.

2. It shall be a prohibited practice for a public employer or the employer's designated representative to:

a. Interfere with, restrain or coerce public employees in the exercise of rights granted by this chapter.

b. Dominate or interfere in the administration of any employee organization.

* * *

d. Discharge or discriminate against a public employee because the employee has filed an affidavit, petition or complaint or given any information or testimony under this chapter, or because the employee has formed, joined or chosen to be represented by any employee organization.

Smith's claim that the District committed a prohibited practice within the meaning of section 20.8 may be summarily rejected. Prohibited practices are,

by definition, limited to acts specified in section 20.10. *See, e.g., Koehn v. Indian Hills Cmty. Coll.*, 03 PERB 6414. Although an employer's denial of or interference with rights granted by section 20.8 may amount to a prohibited practice as defined in section 20.10, a claim that section 20.8 has been violated is insufficient as an independent basis for prohibited practice relief.

I. Discrimination Claims

A. Jurisdictional issues

Smith's complaint is based on the District's denial of the 2013 ERIP benefits package to him. The District effectively denied Smith's request that he receive the 2013 ERIP benefits in September 2013. Smith filed this prohibited practice complaint on November 14, 2013.

Section 20.11(1) requires that parties file prohibited practice complaints within 90 days of the alleged violation. The merits of the claims aside, Smith's complaint that the September 2013 denial of benefits to him constituted a prohibited practice is timely because it was filed within 90 days of that denial. The ALJ's conclusion that the claim was time-barred was thus in error.

In connection with his various statutory theories not based on Iowa Code chapter 20, Smith refers to a three-year statute of limitations for discrimination claims under the ADA, ADEA, Equal Pay Act, and Ledbetter Fair Pay Act. He argues that, because section 20.10(2)(d) uses the term "discriminate," PERB has authority to hear all types of discrimination claims, including those with three-year limitation periods. The Board rejects this argument for two reasons. First, section 20.10(2)(d) requires the discrimination result from the employee

filing “an affidavit, petition or complaint or [giving] any information or testimony under this chapter, or because the employee has formed, joined or chosen to be represented by any employee organization.” Thus, PERB may only hear claims of discrimination based on an employee’s union activities, and those claims must be filed within 90 days of the alleged discrimination.

Second, the statutes with three-year limitation periods either grant another forum, such as the Iowa Civil Rights Commission, exclusive jurisdiction or require exhaustion of administrative remedies in an agency other than PERB. See 42 U.S.C. § 2000e-5(f)(1); Iowa Code § 216.16; *Brooks v. Midwest Heart Group*, 655 F.3d 796, 800 (8th Cir. 2011); *Polk County v. Civil Rights Comm’n*, 468 N.W.2d 811, 816 (Iowa 1991). References to these statutes in the employee handbook do not bring these claims within PERB’s jurisdiction. See *Polk County*, 468 N.W.2d at 816-17. In *Polk County*, a terminated employee simultaneously filed a grievance pursuant to a collective bargaining agreement entered under chapter 20 and a complaint with the Iowa Civil Rights Commission. In both, the employee alleged race was a factor in his termination. The Iowa Supreme Court held that Iowa law specifically requires civil rights complaints, even if framed as a violation of a collective bargaining agreement, be initially filed with the Iowa Civil Rights Commission. *Id.* at 816. The Court did state, however, that any basis unrelated to the predecessor of chapter 216 could be pursued through the appropriate court or agency. *Id.* at 817. Consequently, PERB can only address Smith’s discrimination claims based on protected union activity; his age and disability discrimination claims

are beyond PERB's purview. Smith's claims of violations of statutes and law beyond Iowa Code chapter 20 must be dismissed.

B. Discrimination based on protected union activity

Smith alleges that the District discriminated against him in violation of sections 20.10(2)(a) and (d) when it denied him the 2013 ERIP benefits for his 2011 retirement. He claims that the alleged discrimination was based, in part, on his participation in protected union activity.

An essential element of discrimination which violates section 20.10(2)(d) requires that the discrimination be against a public employee. Iowa Code section 20.3(9) defines "public employee" as "any individual employed by a public employer, except individuals exempted under the provisions of section 20.4." Without question, Smith was a public employee until his retirement in 2011. It is, however, undisputed that Smith ceased to be a public employee in 2011. Even if the Board assumed that Smith's prior union activities were the reason for the District's denial of the 2013 ERIP benefits, this would not violate section 20.10(2)(d) because Smith was not a "public employee" in September 2013 when the denial occurred.

II. Remaining claims

Although not clear from either his complaint or subsequent submissions, Smith seemingly asserts that the District's denial of the 2013 ERIP benefits constituted a refusal to negotiate in good faith and an interference with the administration of the Association in violation of section 20.10(1) and 20.10(2)(a)

and (b).³ Smith appears to assert that the mere fact of denying him the benefits of the 2013 ERIP two years after his retirement is proof that the District negotiated in bad faith with the Association and that the District dominated or interfered with the administration of the Association. While the Board thinks such inferences are not warranted from the undisputed fact that Smith was denied 2013 retirement benefits relating back to his 2011 retirement, that aspect of his claim need not be addressed. The Board also sets aside the issue of whether Smith has standing to pursue his claims that the employer bargained in bad faith with the Association. Even if Smith does have standing, those claims are time-barred.

The District and Association completed their bargaining on the 2013-14 contract by reaching a tentative collective bargaining agreement on April 22, 2013, which was subsequently ratified and executed by the parties. Smith, as a school board member, knew or should have known of the bargaining, tentative agreement, and its ratification and execution. Had any bad faith bargaining or interference with the Association occurred, it would have necessarily taken place far more than 90 days prior to Smith filing the complaint.

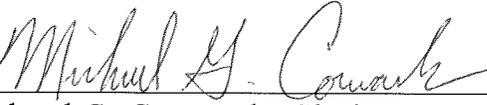
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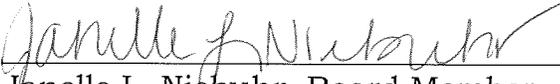
For the reasons stated above, the District's motion is granted and Smith's prohibited practice complaint is DISMISSED.

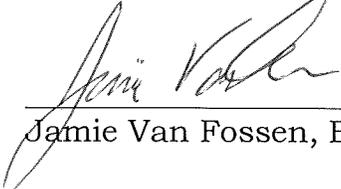
³ Although listed among the chapter 20 provisions allegedly violated by Smith's complaint, neither he nor the District have advanced any argument concerning these apparent theories.

DATED at Des Moines, Iowa, this 9th day of June, 2014.

PUBLIC EMPLOYMENT RELATIONS BOARD

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