

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

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PUBLIC EMPLOYMENT
RELATIONS BOARD

AFSCME IOWA COUNCIL 61, Complainant,)	
)	
and)	CASE NO. 8756
)	
STATE OF IOWA,)	
Respondent.)	

RULING ON MOTION FOR SUMMARY JUDGMENT

The Complainant, AFSCME Iowa Council 61, filed a prohibited practice complaint with the Public Employment Relations Board (PERB or Board) pursuant to Iowa Code section 20.11 and PERB rule 621-3.1(20). The complaint alleges that the Respondent, State of Iowa (Department of Education), committed prohibited practices within the meaning of Iowa Code sections 20.10(1) and 20.10(2)(a),(e), and (f) when it unilaterally changed health insurance benefits of bargaining unit members without negotiating with the bargaining unit's representative, AFSCME.

The State filed a motion for summary judgment alleging that no genuine issue of material fact exists and that it is entitled to prevail as a matter of law on the basis of the undisputed facts. AFSCME filed a resistance to the motion. Counsel for the parties presented oral arguments to the administrative law judge (ALJ) on June 25, 2014 with Attorney Mark Hedberg representing AFSCME and Teddra Porteous representing the State.

I. Undisputed Facts.

On the basis of the pleadings and official notice of relevant case decisions, together with affidavits on file, the following are undisputed facts:

Throughout the early months and summer of 2013, AFSCME held meetings with state employees who were in job classifications that comprise a bargaining unit that had originally been determined in 1977. *See* 77 PERB 363 *et seq.* This unit had remained unrepresented for the purposes of collective bargaining and is commonly referred to as the “education unit.”

On September 30, 2013, AFSCME filed a petition for a representative certification election for the education unit of state employees. Pursuant to PERB subrule 621-4.3(3), within seven days of the receipt of a certification petition, the public employer is required to submit a list of the names and job classifications of the unit employees to PERB. The Board utilizes the list to determine the sufficiency of the petitioning union’s showing of interest. In this case, the State’s department of administrative services (DAS) requested and was granted a seven day extension to submit the list on October 14, 2013 rather than October 7, 2013. The State submitted the list on October 15, 2013, but failed to include unit employees who work for the State’s Board of Regents. The State submitted a complete list on October 22, 2013.

In conjunction with the certification petition, the parties stipulated to an updated description of the education unit because job classification titles had changed over the years since the unit’s original determination in 1977. On October 31, 2013, the Board tentatively approved the stipulation subject to any

objections filed by November 8, 2013. Six state employees filed a timely objection on November 6, 2013. Following an investigation of its merits, the Board overruled the objection on November 18, 2013.

On November 26, 2013, the Board issued a Notice of Certification Election by Mail Ballot and proceeded to conduct the election. When the Board tallied the votes on December 17, 2013, a majority of the valid votes, 233 of the total 336 votes cast, were in favor of AFSCME's representation of the unit. On December 27, 2013, the State filed a timely objection to the election pursuant to Iowa Code section 20.15 and PERB subrules 621-5.4(2) and 5.4(3).

The State changed health insurance benefits for the education unit members on January 1, 2014.

On January 6, 2014, the Board held an evidentiary hearing on the State's objection to the election. On January 14, 2014, the Board overruled the State's objection and certified AFSCME as the education unit's representative for the purposes of collective bargaining. *See In the Matter of AFSCME Iowa Council 61 and State of Iowa*, 14 PERB 8698.

On March 27, 2014, AFSCME filed this prohibited practice complaint alleging that the State unlawfully changed health insurance benefits for the education unit employees without bargaining with AFSCME over the insurance changes.

II. Summary Judgment Issue

The State admits to making health insurance changes for the education unit employees on January 1, 2014. However, the State denies that it had an

obligation to bargain with AFSCME prior to making insurance changes because AFSCME was not certified to represent the unit until January 14, 2014. This is the basis for the State's motion for summary judgment. AFSCME resists the motion contending that the State acted in bad faith to delay AFSCME's certification as the education unit's representative.

III. Applicable Legal Standards.

Although summary judgment motions are not specifically provided for in Iowa Code chapter 20 and PERB rules, PERB typically follows the rules of civil procedure when the agency's rules are silent on a procedural matter. *See, e.g., AFSCME/Iowa Council 61 and City of LeClaire*, 10 H.O. 8161 at 1; *West Des Moines Educ. Ass'n and West Des Moines Cmty. Sch. Dist.*, 81 H.O. 1805 at 8. Iowa Rule of Civil Procedure 1.981(3) provides that summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." "An issue is 'material' only when the dispute is over facts that might affect the outcome of the suit, given the applicable governing law." *Sallee v. Stewart*, 827 N.W.2d 128, 132-33 (Iowa 2013). "The burden is on the moving party to demonstrate that it is entitled to judgment as a matter of law." *Id.* at 133. In determining whether the moving party has met this burden, the facts are viewed in the light most favorable to the nonmoving party. *Merriam v. Farm Bureau Ins.*, 793 N.W.2d 520, 522 (Iowa 2011).

IV. Analysis.

AFSCME's complaint alleges that the State committed prohibited practices within the meaning of Iowa Code sections 20.10(1) and 20.10(2)(a), (e), and (f) when it made changes on January 1, 2014 to the health insurance benefits for the education unit members. Iowa Code section 20.10 provides in relevant part:

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.
 - ...
 - e. Refuse to negotiate collectively with representatives of certified employee organizations as required by this chapter.
 - f. Deny the rights accompanying certification granted in this chapter.

...

The basis of AFSCME's prohibited practice claim is that the State made a unilateral change in a mandatory subject of bargaining (insurance) without first fulfilling its obligation to bargain with AFSCME. To prevail on a unilateral change case, the complainant must show that (1) the employer implemented a change; (2) that the change was to a mandatorily negotiable matter; and (3) that the employer had not fulfilled the applicable bargaining obligation before making the change. *AFSCME Iowa Council 61 and State of Iowa (Dep't of Corrections)*, 14 H.O. 8693 at 16; *Neil Kenneth Greenwald, JR. and Muscatine Cmty. Sch. Dist.*, 12 H.O. 8419 at 6.

Although it is undisputed that the State made unilateral changes to the education unit members' health insurance on January 1, 2014, AFSCME cannot prevail on its unilateral change theory because the State had no duty to bargain the change. While "insurance" is a listed mandatory subject of bargaining under Iowa Code section 20.9, the duty to engage in collective bargaining does not arise until the employee organization has been certified by the Board as the exclusive bargaining representative for the public employees in that bargaining unit. Iowa Code section 20.16 provides:

20.16 Duty to bargain.

Upon the receipt by a public employer of a request from an employee organization to bargain on behalf of public employees, the duty to engage in collective bargaining shall arise if the employee organization has been certified by the board as the exclusive bargaining representative for the public employees in that bargaining unit.

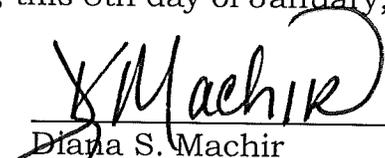
In this case, the State's obligation to bargain "insurance" or any other mandatorily negotiable matter did not arise until AFSCME's certification by the board as the exclusive bargaining representative for the education unit. It is undisputed that AFSCME's certification occurred on January 14, 2014. Until that time, the State did not have an obligation to bargain with AFSCME regarding the education unit employees. Thus, on January 1, 2014, there was no breach of the duty to bargain, which is a required element to establish an unlawful unilateral change.

In its resistance to the State's motion, AFSCME argues that the State was obligated to bargain the insurance changes with AFSCME because the State acted in bad faith to cause undue delay in the election and certification

process. However, this was not the basis of AFSCME's prohibited practice complaint and the claim which the State contends should be dismissed as a matter of law. The basis of AFSCME's prohibited practice complaint is that the State made a unilateral change in a mandatorily negotiable matter (insurance) without first fulfilling its bargaining obligation. A claim of an unlawful unilateral change is not the same as the collective bargaining cases cited by AFSCME where relief from impasse deadlines was afforded due to delay in bargaining by parties under a duty to do so. AFSCME's attempt to bootstrap relief given in these cases to its claim of an unlawful unilateral change is misplaced. While it is disputed whether the State acted in bad faith with regard to actions which delayed AFSCME's certification, it is not a fact material to a claim of an unlawful unilateral change.

It is undisputed that AFSCME was certified to represent the education unit on January 14, 2014. Until that time, the State was not obligated to bargain with AFSCME. Because a breach of the duty to bargain is an essential element of AFSCME's case, and because the undisputed facts establish that no duty to bargain existed at the time of the insurance change, the State is entitled to prevail as a matter of law. For these reasons, the State's motion for summary judgment is GRANTED and AFSCME's prohibited practice complaint is DISMISSED.

DATED at Des Moines, Iowa, this 8th day of January, 2015.



Diana S. Machir
Administrative Law Judge

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