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PERB

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF: MAHASKA COUNTY, Public Employer, and SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 199, Certified Employee Organization, and NICK BATTERSON, Petitioner.	CASE NO. 100725

RULING

On April 25, 2016 the certified employee organization, Service Employees International Union, Local 199 (SEIU), filed what it denominated as a resistance/challenge to the representative decertification petition filed in this case. Following review of SEIU's filing and supporting affidavit, we found reasonable cause to believe the showing of employee interest submitted in support of the petition might have been tainted by representations allegedly made by a member of the public employer's governing body. We subsequently appointed a PERB administrative law judge to conduct an administrative investigation of the allegations made by SEIU.

The essence of SEIU's challenge to the petition is the claim that the chairperson of the Mahaska County Board of Supervisors, the public employer, tainted and rendered invalid the showing of employee interest by making promises to members of the SEIU-represented bargaining unit that if they

voted to decertify SEIU as their representative the County would nonetheless maintain the terms and conditions of employment specified in a recently negotiated successor collective agreement between the County and SEIU. But for that alleged promise of benefit, SEIU alleges, "the Petitioner would not have been able to obtain the requisite number of signatures to trigger a decertification election." SEIU consequently reasons that without a valid showing of employee support, the decertification petition should be dismissed.

Iowa Code section 20.14(5) and PERB subrule 621—4.3(2) require that in order for an election to be conducted, a decertification petition must be supported by at least 30 per cent of the employees in the subject bargaining unit. Subrule 4.3(2) further requires that the petitioner submit evidence of such support and that such showing of interest be dated and signed not more than one year prior to its submission, that it contain the job classification of each signatory and, in a decertification case, a statement that the signatory no longer wishes to be represented by the certified employee organization.

Pursuant to PERB subrule 621—4.3(3), we administratively determine the sufficiency of a petitioner's showing of employee interest. We adhere to the NLRB's established practice of not permitting the parties to litigate the validity or sufficiency of the showing, viewing that determination as a purely administrative matter. *See Crystal Art Gallery,* 323 NLRB 34 (1997); *Broadlawns Medical Center,* 99 PERB 5242 (1/21/99).

Our appointed investigator has conducted an investigation, on the basis of which we are administratively satisfied that the showing of employee support

for the decertification petition is valid and sufficient.

While we agree in principle that a showing of interest may be invalidated by fraud, duress, coercion or other improper conduct surrounding its acquisition, it is unnecessary for us to determine whether improper conduct in fact occurred in this case. Even assuming, without deciding, that a representative of the County made an improper promise of benefit as alleged by SEIU, our investigation reveals that the showing of employee support is nonetheless valid and sufficient.

SEIU's filings, in combination, assert that the chairperson of the County's board of supervisors made a promise of benefit which invalidated the showing of interest when he spoke with the members of the bargaining unit at the County's secondary roads department's facility. Neither SEIU's challenge nor its supporting affidavit, however, specifies the date of this alleged event.

The ALJ's investigation has revealed that the chairperson of the County's board of supervisors did in fact, on one occasion, visit bargaining unit employees at the secondary roads department, and that the consequences of SEIU's possible decertification as the unit's representative was one of the topics discussed. The chairperson's visit, which is the only relevant contact between a representative of the County and the unit's employees revealed by the ALJ's investigation, occurred early in the morning of Friday, April 8, 2016, prior to the start of the employees' normal work day.[1]

[1] During the investigation by the ALJ, the SEIU business representative whose affidavit was submitted in support of its challenge expressed the belief that the chairperson's visit to the secondary roads department had occurred on March 31, 2016. This belief was based upon the

The showing of employee interest, however, reveals that all of the employees expressing support for SEIU's decertification signed the showing of interest prior to the April 8, 2016 visit. We thus conclude that any statements made by the chairperson of the County's board of supervisors on April 8, even if improper, cannot form a basis for the invalidation of the showing of interest in this case because the showing was complete, in appropriate form, and contained a sufficient number of signatures prior to the alleged promises or representations having been made. Believing that an employee's execution of a showing of interest cannot be tainted by employer conduct which has not yet occurred, we conclude that SEIU's allegation that the requisite number of employee signatures would not have been obtained but for the employer's alleged promise of benefit is without basis in fact.[2]

SEIU's challenge is consequently OVERRULED. Having determined that the showing of employee support for the decertification petition is sufficient to meet the requirements of the statute and rule, an order directing that a representative decertification election be scheduled and held shall issue.

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chairperson's later statement to the SEIU representative that the visit had occurred on a Thursday, in combination with a unit employee's statement that the visit had occurred during the week prior to the employee's scheduled vacation. Our investigation confirmed that the chairperson, mistakenly and based solely on his recollection at the time, did in fact tell the SEIU representative that the visit had occurred on a Thursday. Subsequent review of his calendar revealed the error to the chairperson, who readily acknowledged his mistaken statement during the investigation. SEIU's belief that the visit had occurred during the March 28-April 1 work week appears to have been based upon a misunderstanding or miscommunication between the SEIU representative and the unit employee, who had in fact been away on vacation during the April 4-8 work week and had thus not been present when the visit occurred, but had been informed of it upon his return to work the following week.

[2] But even in the unlikely event that all of the individuals interviewed who fixed the date of the chairperson's visit were in error, and that the alleged taint occurred on March 31, 2016 as SEIU thought, such would not alter our ruling because all of those signatory to the showing of interest executed the show prior to March 31.

DATED at Des Moines, Iowa, this 6th day of May, 2016.

PUBLIC EMPLOYMENT RELATIONS BOARD

Michael G. Cormack, Chair

Jamie K. Van Fossen, Board Member

Mary T. Gannon, Board Member