

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF:)	
)	
CITY OF INDIANOLA,)	
Public Employer,)	
)	
And)	CASE NO. 100819
)	
CONSTRUCTION AND PUBLIC EMPLOYEES)	
LiUNA LOCAL 177,)	
Petitioner.)	

DECISION AND ORDER

Upon a petition filed by Construction and Public Employees LiUNA Local 177 in accordance with Iowa Code section 20.14 and PERB rule 621—4.3(20), a representative certification election by mail ballot was conducted herein under the direction and supervision of the Public Employment Relations Board (PERB or Board). PERB's tally of ballots on May 9, 2017 determined that the majority of employees in the bargaining unit did not vote for LiUNA Local 177 as their exclusive bargaining representative. LiUNA Local 177 subsequently filed a timely objection to the election pursuant to Iowa Code section 20.15(4) and PERB subrule 621—5.4(2), alleging that misconduct or other circumstances prevented the public employees eligible to vote from freely expressing their preferences and requesting that the election be invalidated and a second election held. The City of Indianola took a neutral position on LiUNA Local 177's objection.

Pursuant to notice, an evidentiary hearing on the objection was held before the Board on July 6, 2017. LiUNA Local 177 was represented by

attorney Michael Amash. The City did not participate in the hearing, but was present through its attorney Matt Brick.

Based on our review of the record and oral argument, LiUNA Local 177's objection to the election is OVERRULED.

I. FINDINGS OF FACT

The City is a public employer within the meaning of Iowa Code section 20.3(10).¹ LiUNA Local 177 is an employee organization within the meaning of Iowa Code section 20.3(4) and is certified as the exclusive representative for a bargaining unit of employees who work in various departments and offices for the City. Prior to April 4, 2017, this unit consisted of a mixed group of “non-public-safety employees” and police officers—positions now characterized as “public-safety employees” within the meaning of 2017 Iowa Acts, House File 291. The H.F. 291 amendments, effective February 17, 2017, distinguished Iowa Code section 20.9 bargaining rights for the two groups and changed the calculation of what constitutes a majority required for employee organizations to win representative certification elections. The majority is now based on the number of eligible voters in the unit rather than on the number of votes cast.

Due to the chapter 20 changes in bargaining rights for “public-safety employees,” LiUNA Local 177 and the police officers wanted the officers in their own separate unit. On February 14, 2017, LiUNA Local 177 filed a petition to amend the Indianola unit to exclude the police officers. *See City of Indianola and Constr. and Pub. Emps. LiUNA Local 177*, 17 PERB 100802. The City

¹ All references are to Iowa Code (2017) as amended by 2017 Iowa Acts, House File 291.

agreed to the proposed amendment and on March 3, 2017, the Board amended the unit in accordance with the parties' agreement.

On March 13, 2017, LiUNA Local 177 initiated this combined unit determination/representative certification proceeding, requesting PERB's determination that a unit of only the City's police officers was appropriate. The Board tentatively approved LiUNA Local 177 and the City's stipulation to the unit's composition. On April 4, 2017, the Board issued its final decision that the police officers constituted an appropriate unit for the purposes of collective bargaining and ordered a representative certification election among the employees in that unit to determine whether the unit would be represented by LiUNA Local 177. The Board directed the City to post the order in conspicuous locations customarily used for the posting of information for the potentially affected bargaining unit employees and to file a list of the names, job classifications, and addresses of eligible voters. The parties agreed to a list of 13 eligible voters.

In its conduct of the ensuing representative certification election, PERB followed its established mail-balloting practices and procedures, including those concerning its receipt and storage of returned ballots and its handling, opening, counting and tallying of returned ballots. On April 26, 2017, PERB mailed voting packages consisting of instructions to eligible employees, an official ballot, a secret ballot envelope and a PERB-coded postage-paid, pre-addressed return envelope to each of the 13 officers at the addresses shown on the list of eligible voters filed by the employer. The instructions described the

contents of the voting package, included detailed steps on marking and returning the ballot, and specified that in order to be counted ballots must be received by PERB no later than 3:00 p.m., May 9, 2017.

The instructions provided in relevant part:

1. Read the official ballot carefully.
2. Mark your ballot. Do not sign the ballot.
3. Seal your ballot in the **WHITE SECRET BALLOT** envelope.
4. Seal the **SECRET BALLOT** envelope inside the **BROWN RETURN** envelope.
5. **SIGN** the **BROWN RETURN** envelope in the space provided.
6. Mail the **BROWN RETURN** envelope to the address printed on it.

**YOUR BALLOT WILL NOT BE COUNTED UNLESS YOU ENCLOSE
YOUR BALLOT IN THE WHITE SECRET BALLOT ENVELOPE
AND SIGN THE BROWN RETURN ENVELOPE. . . .**

To be counted, ballots must be **RECEIVED** by the Public Employment Relations Board, 510 East 12th Street, Suite 1B, Des Moines, Iowa 50319, no later than **3:00 p.m., May 9, 2017.**

Ballots will be counted following the **3:00 p.m. deadline on May 9, 2017, at the PERB office.**

If you have any questions you should immediately contact:

Iowa Public Employment Relations Board
510 East 12th Street, Suite 1B
Des Moines, Iowa 50319
515-281-4414

IF YOU ARE UNABLE TO RETURN YOUR BALLOT BY MAIL, YOU MAY VOTE AT THE PUBLIC EMPLOYMENT RELATIONS BOARD OFFICE PRIOR TO 3:00 P.M. ON MAY 9, 2017.

To prevail in the certification election, LiUNA Local 177 was required to receive the affirmative vote of a majority of the eligible employees. Based on a unit of 13 eligible voters, the majority required was seven votes. On the day of PERB's vote tally, May 9, 2017, PERB had received only six return envelopes.

Upon opening the return envelopes, the PERB election agent voided one ballot and sealed it in its return envelope because the ballot had not been enclosed and sealed inside its secret envelope as instructed. The remaining five ballots were counted: four votes were cast in favor of LiUNA Local 177 and one vote was cast against LiUNA Local 177. As a result, LiUNA Local 177 did not receive the required majority of seven votes in favor of its representation. The PERB election agent filed the tally sheet that reflected the four votes cast for LiUNA Local 177, the one vote cast against LiUNA Local 177, and the one void ballot.

The next day, May 10, 2017, PERB received two additional return envelopes that were not opened and their enclosed ballots, if any, counted in the tally because they were untimely. These two return envelopes were stored with the rest of the envelopes, ballots, and list of eligible voters.

On May 19, 2017, LiUNA Local 177 filed a timely objection to the election alleging that all the ballots had not been counted and that H.F. 291 had created confusion in the voting process. Attached to its objection were affidavits from seven officers attesting that they had voted in the election and to the best of their knowledge returned their completed ballots to PERB by May 9, 2017. The officers' affidavits did not specify how they had voted.

In the Notice of Hearing filed June 1, 2017, PERB notified the parties that it was taking official notice of the voting materials along with other

documents, all of which were listed in the Notice and provided to the parties prior to the evidentiary hearing.² The voting materials were specified as:

5. PERB's coded list of eligible voters, the five valid votes cast in the election, the secret ballot envelopes and signed return envelopes in which those ballots were returned, the signed return envelope with enclosed ballot which was voided by the PERB election agent/case processor due to the voter's failure to enclose the ballot in the secret ballot envelope, and the two untimely ballots received by PERB on May 10, 2017.

Based on an examination of the voting materials, the return envelopes of all of the officers who provided sworn affidavits were accounted for. These officers consisted of the five who cast valid ballots and the two who submitted untimely return envelopes—ascertained by matching their names to their respective PERB-coded return envelopes. Because the untimely return envelopes were not opened, it is unknown whether they contained ballots.

By subsequent notice filed June 22, 2017, PERB took official notice of certain facts set forth in the notice to the parties. These facts described the voting packages and the date of their mailings to the 13 eligible voters. The facts provided that PERB had adhered to established mail-balloting practices and procedures in carrying out the election.

At the evidentiary hearing on July 6, 2017, LiUNA Local 177 clarified its objection as previously plead and asserted there were certain circumstances, and not misconduct, which prevented eligible voters from expressing their preferences. LiUNA Local 177 Representative Tom Hayes was surprised at the

² Official notice was taken of specified documents—summarized here as follows: (1) the bargaining unit history of the unit; (2) all filings of record in PERB Case No. 100802; (3) all filings in the present case; (4) e-mail correspondence of April 19-20, 2017; and (5) all voting materials.

results of the election. Hayes assumed that the seven officers who provided sworn affidavits had voted timely and in support of LiUNA Local 177. Hayes testified, “[M]ore ballots were submitted than counted.” One of the officers, Luke Buhrow, did not believe the affidavits matched up with the results. Buhrow had taken over as union steward for the unit. He claimed that the amendments to chapter 20 had created confusion for some of the officers in the voting process, but he provided no specifics on how the statutory changes, made months earlier, had created confusion about PERB’s long-standing mail ballot process. Buhrow did not explain why the officers had not sought clarification from PERB, as directed in the voter instructions, if confusion did exist.

II. CONCLUSIONS OF LAW

LiUNA Local 177 alleges circumstances other than misconduct prevented the officers from freely expressing their preferences because PERB counted only five ballots although there were seven officers who subsequently indicated by affidavits that they had returned their ballots. Additionally, LiUNA Local 177 asserts that the election via mail ballot rather than an in-person election created confusion for the voters when it was the first election after chapter 20 was amended.

Iowa Code section 20.15(4) provides that the Board may invalidate an election and hold a second election if it “finds that misconduct or other circumstances prevented the public employees eligible to vote from freely

expressing their preferences.” *See also* PERB subrule 621–5.4(2)(g) (in effect on March 13, 2017).

In the present case, there is no showing that the 13 officers were prevented from freely expressing their preferences. PERB followed its established mail-balloting practices and procedures. PERB mailed voting packages with detailed instructions to all 13 officers on April 26 and the ballots were not counted until May 9, 2017—13 days later. The seven officers who provided the sworn affidavits are accounted for: five officers cast valid ballots and the return envelopes of the other two officers arrived late—the day after the vote count. All seven officers did mail return envelopes to PERB, as they indicated in their affidavits. However, only five of these were at the PERB offices to be opened and the enclosed ballots counted at the 3:00 p.m. deadline on May 9, 2017. PERB’s tally of the timely ballots was accurate and its handling of the void ballot was in accordance with established procedures and the detailed instructions given to eligible voters. LiUNA Local 177 failed to establish the existence of any circumstances which prevented the 13 officers from freely expressing their preferences in the election.

Nor has LiUNA Local 177 established that the amendments to chapter 20 prevented the officers from freely expressing their preferences in the election. The amended statute now requires that the employee organization must win the majority of all eligible employees’ votes rather than simply the majority of votes cast. While the amendments changed the calculation of a majority required for a representative certification election, the amendments did not

require or cause any change in PERB's established mail-balloting procedures. PERB followed those procedures when carrying out the mail-ballot election. All 13 officers were provided with very detailed instructions and had ample opportunity to mark and cast their ballot by mail or in-person.

III. CONCLUSION

LiUNA Local 177 did not meet its burden to establish the existence of misconduct or other circumstances that prevented the 13 officers from freely expressing their preferences in the election.

Accordingly, we enter the following:

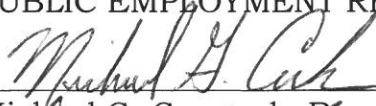
ORDER

Construction and Public Employees LiUNA Local 177's objection is OVERRULED. The Board will issue an order of noncertification concerning Construction and Public Employees LiUNA Local 177 and the recently determined unit.

This decision constitutes final agency action.

DATED at Des Moines, Iowa, this 17th day of November, 2017.

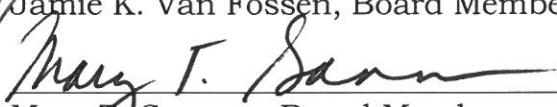
PUBLIC EMPLOYMENT RELATIONS BOARD



Michael G. Cormack, Board Chair



Jamie K. Van Fossen, Board Member



Mary T. Gannon, Board Member