

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

AFSCME IOWA COUNCIL 61,

Petitioner,

v.

IOWA PUBLIC EMPLOYMENT
RELATIONS BOARD,

Respondent.

Case No. CVCV048806

RULING ON PETITION
FOR JUDICIAL REVIEW

BE IT KNOWN that hearing was held May 1, 2015 on the Petition for Judicial Review filed herein by AFSCME Iowa Council 61. The Petitioner (hereinafter AFSCME) was represented by attorneys Sarah M. Wolfe and Mark T. Hedberg. Respondent Iowa Public Employment Relations Board (hereinafter PERB) was represented by attorney Diana S. Machir.

STATEMENT OF THE CASE:

This is a judicial review of a final agency action brought pursuant to Iowa Code section 17A.19. The statement of the case and facts are straightforward and not disputed.

AFSCME filed a prohibited practices complaint against the State of Iowa, Department of Corrections (hereinafter State) in February, 2012, alleging that the Department of Corrections (hereinafter DOC) violated certain provisions of Iowa Code Chapter 20 when they denied AFSCME members the right to wear union pins depicting a photo of Governor Branstad with the universal red “no” symbol across it, and the phrases “1991 or 2011” written across the top and “NOTHING HAS CHANGED” written across the bottom of the pin. There is nothing on the pin that makes it clear to the public that the pin is as an AFSME union pin.

In a March, 2014 ruling, an administrative law judge of PERB found that the DOC's prohibition of the pins was a prohibited practice in violation of Iowa Code Section 20.10(2)(a). The State appealed.

In its October, 2014 decision, the Public Employee Relations Board concluded that "special circumstances" existed in this situation which warranted the DOC's ban of the pins. Based upon that finding, PERB reversed the ALJ's decision that the State committed a prohibited practice in violation of Iowa Code Section 20.10(2)(a). AFSCME seeks judicial review of PERB's decision herein.

STANDARD OF REVIEW:

In a judicial review action of a contested administrative agency decision brought pursuant to Iowa Code Chapter 17A, the court shall reverse, modify, or grant appropriate relief from agency action if it determines that substantial rights of those seeking judicial relief have been prejudiced because the agency action violated any provision of Iowa Code Section 17A.19(10). In this case, the burden is on AFSCME to demonstrate that the action of PERB was invalid. Iowa Code § 17A.19(8)(a).

AFSCME claims PERB's decision in this case is invalid because it is "based upon an irrational, illogical, or wholly unjustifiable interpretation of a provision of law; based upon an irrational, illogical, or wholly unjustifiable application of law to facts; and, the agency action is based upon a determination of fact that is not supported by substantial evidence in the record before the court when that record is viewed as a whole." If valid, these claims would entitle AFSCME to relief under Iowa Code §§ 17A.17(10)(f), (l), and (m).

Iowa Code § 17A.17(10)(f) provides a claimant relief if an agency action is based upon a determination of fact that is not supported by substantial evidence in the record when the record

is viewed as a whole. “Substantial evidence” means the quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance. Iowa Code § 17A.19(10)(f)(1). The adequacy of the evidence in the record to support a particular finding of fact must be judged in light of all the relevant evidence in the record that detracts from the finding as well as the evidence that supports it, including any determinations of veracity by the presiding officer who personally observed the demeanor of the witnesses and the agency’s explanation of why the relevant evidence in the record supports its material findings of fact. Iowa Code § 17A.19(10)(f)(3). The determinative factor is not whether evidence supports a different finding, but whether the evidence supports the finding actually made. *IBP v. Al-Gharib*, 604 N.W.2d 621,632 (Iowa 2000). Evidence is not insubstantial merely because it would have supported a contrary inference. *Id.*

Iowa Code §§ 17A.17(10)(l) and (m) would provide relief if PERB’s decision was based upon an irrational, illogical, or wholly unjustifiable interpretation of a provision of law, or an irrational, illogical, or wholly unjustifiable application of law to fact.

A decision is “irrational” when it is “not governed by or according to reason.” *Webster’s Third New International Dictionary* 1195. A decision is “illogical” when it is “contrary to or devoid of logic.” *Id.* at 1127. A decision is “unjustifiable” when it has no foundation in fact or reason. *See id.* at 2502 (defining “unjustifiable” as “lacking in . . . justice”); *id.* at 1228 (defining “justice” as “the quality or characteristic of being just, impartial or fair”); *id.* (defining “just” as “conforming to fact and reason”). *Sherwin Williams Co. v. Iowa Dep’t of Revenue*, 789 N.W.2d 417, 432 (Iowa 2010).

AFSCME Iowa Council 61 v. Iowa Public Employment Relations Bd., 846 N.W.2d 873 (2014).

ANALYSIS:

I. **Iowa Code § 17A.17(10)(f) – Agency action based upon determination of fact unsupported by substantial evidence:**

AFSCME argues that PERB's conclusion that special circumstances exist to justify the DOC's prohibition of the pin at issue herein is not supported by substantial evidence.

It is not disputed that union members have a statutory right to wear union insignia under Iowa Code § 20.8(3). It is also not disputed that an exception to this right exists for special circumstances. Special circumstances that have been long-recognized as justification for employer infringement upon this right include where prohibition of an activity is necessary in order to maintain discipline and ensure safety. *Republic Aviation Corp. v. N.L.R.B.*, 324 U.S. 793, 803 (1945).

In this case, at least two union staff members at the Iowa Medical and Classification Center complained to their warden that they found the pins offensive. Subsequently, the DOC banned the pins because they were deemed disrespectful, did not display appropriate behavior, did not comport with the responsibility of the DOC to model prosocial behavior to offenders, and were in violation of DOC policies. These include policies requiring employees to conduct themselves in a professional manner which creates and maintains respect for the DOC and to avoid action that might adversely affect confidence in the criminal justice system. DOC representatives testified that the pins herein were disrespectful to Governor Branstad, who is at the top of the DOC's chain of command, and viewed them as an attack on the DOC from the top down.

The work environment in the present matter is unlike any other. DOC employees are responsible for the housing, care, rehabilitation, and 24 hour supervision of criminal offenders whose offenses were deemed serious enough to warrant imprisonment. The volatile nature of the

prison setting presents unique needs which require a very high level of control and consistency to avoid disruption. Maintenance of control and avoidance of disruption in the prison environment are paramount to the safety of both employees and offenders. If there is any place where it is necessary to maintain discipline, it would be in a prison. Internal security within a correctional facility is central to all other corrections goals. *Pell v. Procunier*, 417 U.S. 817, 822, 94 S.Ct 280, 41 L.Ed.2d 495. Though the need to maintain discipline and ensure safety would typically apply to employees, it is reasonable and necessary, within the DOC, to extend that need to the offenders under the employees' supervision, as well.

These enhanced needs for control and consistency, along with the "paramilitary structure" of the Department of Corrections were significant factors contributing to PERB's finding that special circumstances exist in this case. This court finds substantial evidence, as defined above, exists to support that finding.

This court further agrees that, given the volatile environment of a prison, the DOC should not be required to wait until correctional staff or inmate safety is actually jeopardized through actual workplace disruption to prove special circumstances. Workplace disruption within the DOC would undermine offender confidence not only in the DOC, but also in the criminal justice system. Disruption and disorder within a prison, be it amongst staff or otherwise, could provide an excuse for negative, if not dangerous, offender behaviors. Given the unique work environment in this situation, this court agrees that there is sufficient evidence to support a need for immediate action rather than require the DOC to wait until a potentially dangerous situation develops.

- II. **Iowa Code §§ 17A.17(10)(l) – Agency action based upon an irrational, illogical, or wholly unjustifiable interpretation of a provision of law whose interpretation has clearly been vested by a provision of law in the discretion of the agency.**

AFSCME did not identify a specific provision of law claimed to have been erroneously interpreted by PERB. However, to the extent AFSCME's argument is that PERB's interpretation of the special circumstances exception was irrational, illogical, or wholly unjustifiable, this court disagrees for those reasons set forth above.

- III. **Iowa Code § 17A.17(10)(m) – Agency action based upon an irrational, illogical, or wholly unjustifiable application of law to fact that has been clearly vested by a provision of law in the discretion of the agency.**

Again, AFSCME did not identify a specific erroneous application of law to fact by PERB. However, to the extent AFSCME's argument is that PERB's application of the special circumstances exception to the DOC action prohibiting this specific pin was irrational, illogical, or wholly unjustifiable, this court again disagrees for those reasons set forth above.

For the foregoing reasons, the Iowa Public Employment Board's dismissal of AFSCME's prohibited practice complaint is hereby AFFIRMED.



State of Iowa Courts

Type: OTHER ORDER

Case Number CVCV048806
Case Title AFSCME IOWA COUNCIL 61 V. PERB

So Ordered

A handwritten signature in cursive script that reads "Dustria A. Relph".

Dustria A. Relph, District Court Judge,
Fifth Judicial District of Iowa