

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

AMERICAN FEDERATION OF STATE,)	
COUNTY AND MUNICIPAL EMPLOYEES,)	
IOWA COUNCIL 61,)	
)	
Appellant,)	CASE NO. 102128
)	
and)	
)	
STATE OF IOWA)	DECISION ON REMAND
(DEPARTMENT OF CORRECTIONS -)	
IOWA STATE PENITENTIARY),)	
)	
Appellee.)	

This matter comes before the Iowa Public Employment Relations Board on Remand from the December 13, 2022 Ruling by the Iowa District Court in and for Polk County in *AFSCME v. Iowa Public Employee Relations Board*, Case No. CVCV063286.

In relevant part, the December 13, 2022 Ruling by the Honorable Judge Joseph Seidlin, Fifth Judicial District in and for Polk County District Court, found and directed as follows:

[T]he Agency did not decide whether Wachtendorf violated the public employees’ rights to engage in concerted activity for the purpose of mutual aid and protection of themselves and their coworkers outside the context of collective bargaining and the constraints of the terms of the CBA. PERB only concluded LeMaster and Eaves engaged in protected concerted activity in requesting a meeting, then only went on to analyze only whether this was a violation for purpose of collective bargaining and under Iowa Code section 20.10(2)(a)- (d). Its conclusion that this was not a violation because the State was not required to meet with them regarding health and safety issues because such issues are only permissive under the CBA in no way addresses whether it was a violation outside the scope of the CBA. As set forth above, the Court has determined the plain language of section 20.8(3) protects concerted activities both for the purpose of collective bargaining and other mutual aid or protection. In addition, the Board did not make a determination whether the proposed meeting itself was protected concerted activity.

...
The case must be remanded to the Board to determine if the meeting was protected concerted activity for the purpose of “other mutual aid or protection” outside the

scope of collective bargaining and the terms of the relevant CBA, and if so whether Wachtendorf violated that right by refusing to meet with LeMasters and Eaves.

...

On remand the Agency shall consider the September staff communications meeting as underlying evidence of whether the public employees' rights to concerted activity for the purpose of "other mutual aid or protection" under Iowa Code section 20.8(3) were violated by the State.

....

For all of the reasons set forth above, the Court concludes the plain language of Iowa Code section 20.8(3) protects public employees' rights to engage in concerted activities for the purpose of both "collective bargaining" and "other mutual aid or protection." Here, PERB failed to make a determination as to whether the proposed meeting itself was protected concerted activity "for the purpose of . . . other mutual aid or protection" or whether Wachtendorf's refusal to meet with LeMaster and Eaves violated these public employees' rights under that specific portion of Iowa Code section 20.8(3) outside the context of collective bargaining and the constraints of the terms of the CBA. The Court concludes its failure to do so in applying section 20.8(3) was irrational, illogical, or wholly unjustifiable. As this this issue was raised but not decided upon by the Agency, it is not properly before the Court and must be remand to allow PERB make findings and conclusion on this issue.

The Court further concludes PERB's interpretation and application of Iowa Code section 20.10(2)(a)-(d), which was specifically limited to whether chapter 20 and the CBA required Wachtendorf to meet with the public employees in their capacity as union members in the collective bargaining context, was not irrational, illogical, or wholly unjustifiable.

AFSCME v. Iowa Public Employee Relations Board, Case No. CVCV063286, Ruling on Petition for Judicial Review pp. 13-14, 15, 17 (December 13, 2022).

PROCEDURAL BACKGROUND

On November 21, 2017, the American Federation of State, County and Municipal Employees, Iowa Council 61 (hereinafter "AFSCME") filed a prohibited practices complaint (hereinafter "PPC") against the Department of Corrections – Iowa State Penitentiary (hereinafter "State") alleging that the State engaged in a prohibited practice in violation of the Iowa Public Employment Relations Act (hereinafter "IPERA") sections 20.8 (3), 20.10(2) and (3). Pursuant to Iowa Code section 20.11, an evidentiary hearing was held before Administrative Law Judge

Patrick Thomas (hereinafter “ALJ”) on August 18, 2020. The ALJ issued a proposed decision on April 13, 2021 (hereinafter “Proposed Decision”) dismissing AFSCME’s complaint.

On April 14, 2021, AFSCME timely appealed the ALJ’s Proposed Decision to the Public Employment Relations Board (hereinafter “PERB” or “Board”). The Parties submitted briefs on October 19, 2021, and oral arguments were heard by the Board on November 3, 2021. On February 18, 2022 the Board issued a decision affirming and upholding the ALJ’s Proposed Decision dismissing the complaint with additional discussion.

On March 16, 2022, AFSCME filed a Petition for Judicial Review of the Board’s February 18, 2022 decision in the Iowa District Court in and for Polk County. The Honorable Joseph Siedlin issued a Ruling on December 13, 2022, granting AFSCME’s Petition in part, denying it in part, and remanding the matter back to PERB with instructions. On December 27, 2022, the Court issued a Ruling on Motion to Reconsider, Enlarge or Amend correcting the standard of review applied in the December 13, 2022 Ruling, but otherwise leaving the Ruling unchanged.

On remand, the Parties submitted briefing to the Board on March 2, 2023, and the matter was submitted to the Board on the briefing and without additional hearing or oral arguments.

FINDINGS OF FACT

The Board adopts the Findings of Fact as set forth in its February 18, 2022 decision, which adopted the findings of fact in the ALJ’s Proposed Decision, and incorporates same as though fully set forth herein.

CONCLUSIONS OF LAW

Per the District Court’s Ruling, it is the Board’s direction on remand to determine (1) whether LeMaster’s and Eaves’ request to meet with Warden Wachtendorf was protected concerted activity for the purpose of “other mutual aid or protection” outside of the scope of the

collective bargaining and the terms of the CBA, and, if so, (2) whether the State violated 20.8(3) in refusing to meet.

As noted by the District Court, Iowa Code section 20.8(3) provided in 2017, and continues to provide, that:

[p]ublic employees shall have the right to:

...

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.

Iowa Code § 20.8(3) (2017). The District Court found that the plain and unambiguous language of section 20.8(3) protects public employees' rights to engage in concerted activities for the purpose of mutual aid or protection outside of the collective bargaining process and the collective bargaining agreement. *AFSCME v. Iowa Public Employee Relations Board*, Case No. CVCV063286, Ruling on Petition for Judicial Review, pp. 9-10 (December 13, 2022); *see also Eastex, Inc. v. N.L.R.B.*, 437 U.S. 556, 565 (1978) (“[L]abor's cause often is advanced on fronts other than collective bargaining and grievance settlement within the immediate employment context [A]s the language of § 7 makes clear . . . protect concerted activities [are] for the somewhat broader purpose of ‘mutual aid or protection’ as well as for the narrower purposes of . . . ‘collective bargaining.’”). “The scope of section 20.8(3) applies not only to concerted activity under the collective bargaining agreement or to enforce the agreement, but also for ‘other mutual aid or protection.’ This broadens the scope of protected activity beyond those concerted activities directly related to collective bargaining. Thus, section 20.8(3) also finds an employee's attempts to initiate, induce, or prepare for group action to be protected activity.” *AFSCME Iowa Council 61 Complainant & State of Iowa, Respondent*, 2020 WL 5944284, at *14–15 (Aug. 5, 2020) (internal citations omitted).

To be protected activity under section 20.8(3), the conduct of a public employee must be concerted and be intended for the purpose of mutual aid or protection of employees. Iowa Code § 20.8(3); *AFSCME Iowa Council 61 Complainant & State of Iowa, Respondent*, 2020 WL 5944284, at *14–15 (citing *El Gran Combo de Puerto Rico v. Nat'l Labor Relations Bd.*, 853 F.2d 996, 1002 (1st Cir. 1988) and stating “[f]or an activity to be protected, the complainant must demonstrate the activity was concerted in nature and done for mutual aid or protection.”) Iowa's definition of public employee “means any individual employed by a public employer, except individuals exempted under the provisions of section 20.4.” Iowa Code § 20.3(10); *Clay Cnty. v. Pub. Emp. Rel. Bd.*, 784 N.W.2d 1, 7 (Iowa 2010). Such exempt employees include, but are not limited to, supervisory employees, confidential employees, temporary employees, and patients and inmates employed, sentenced or committed to any state or local institution. *Id.* § 20.4.

The term “concerted activity” is not defined in either the Iowa Code or the National Labor Relations Act (NLRA); however, case law has explained the term to mean activities of employees who have joined together to achieve common goals. *Nat'l Labor Relations Bd. v. City Disposal Sys. Inc.*, 465 U.S. 822, 829, 104 S. Ct 1505, 1511, 79 L. Ed. 2d 839 (1984). Generally, concerted activity must be undertaken together by two or more employees or by one employee on behalf of others. *Meyers Indus., Inc. & Prill*, 268 NLRB 493. 1984 WL 35992 (N.L.R.B. January 6, 1984). Action done individually may be concerted “if it represents either a continuation of earlier concerted activities or a logical outgrowth of concerted activities.” *St. Paul Park Refining Co., LLC v. NLRB*, 929 F.3d 610, 616 (8th Cir. 2019)(citing *NLRB v. RELCO Locomotives, Inc.*, 734 F.3d 764, 785 (8th Cir. 2013)). There must be substantial evidence on the record as a whole that supports the finding that an employee intended or contemplated, as an end result, to benefit employees other than himself. *See Koch Supplies Inc., v. NLRB*

1981)(per curium)).

As noted by the District Court, PERB did determine that LeMaster's and Eaves' *request* to meet with Wachtendorf was a concerted act intended to improve the health and safety of themselves and others" and; therefore, it was "protected concerted activity under Iowa Code section 20.8(3)." April 13, 2021 Proposed Decision and Order pp. 10-11 ("Prop. Dec.") (emphasis added); *aff'd* February 18, 2022 Board Decision pp. 1-2 ("Decision"). The Board finds that it follows that the proposed meeting itself was also a concerted activity intended for the purpose of the mutual aid or protection of employees. Iowa Code § 20.8(3).

The record evidences that, in September of 2017, when LeMaster and Eaves attempted to ask questions on behalf of the union members related to the safety concerns, Wachtendorf stated she would speak to them about individual, not group concerns. (Hrg. Tr. pp. 11:10-12:16; 19:17-20:17). LeMaster and Eaves wanted to meet with Wachtendorf to discuss concerns regarding the "health and safety" of the staff (Cert. Rec. Item 8, Pet. Ex. A – October 14, 2017 Email; Hrg. Tr. pp. 11:10-14:22, 19:17-20:17). Such was a result of the increased altercations with inmates. (Hrg. Tr. pp. 13:18-14:2, 19:17-20:17). Employees felt intimidated by the administration and felt that they would be retaliated against for bringing up certain issues. (Hrg. Tr. pp. 14:14-22). Wachtendorf refused to meet with LeMaster and Eaves in their Union capacity but was willing to meet with them in their individual capacity. (Cert Rec. Item A, Pet. Ex. A, October 16, 2017 Email).

As set forth above, Iowa Code section 20.8 protects public employees' rights to engage in concerted activities for the purpose of mutual aid or protection. LeMaster's and Eaves' attempt to communicate employees' concerns regarding their health and safety based upon increased inmate assaults is clearly a protected concerted activity. While the State has no obligation to bargain or

negotiate with regard to such concerns, it also cannot interfere with or restrain employees' rights to express concerns and be heard on such matters. Iowa Code § 20.10(2)(a); *AFSCME Iowa Council 61 Complainant and State of Iowa, Respondent*, 2020 WL 5944284, at *6 (August 5, 2020 PERB). The record is clear that the State, by Wachtendorf refusing to listen or entertain questions regarding these matters on behalf of the Union and refusing to have a meeting to hear such concerns, interfered or restrained such rights as they relate to "other mutual aid or protection."

The Board does not find that an in-person meeting must always be held to further the employees' rights under section 20.8(3) as there is no specific requirement in Iowa Code Chapter 20 or Iowa case law or Iowa PERB decisions after the 2017 statutory changes¹ regarding formal meetings for matters related to mutual aid or protection²; rather, only that the State may not interfere with or restrain employees' rights by refusing to allow them to voice concerns or issues related to mutual aid or protection. In the instant matter, taking into consideration both the September 2017 meeting and October 2017 email communications, it is clear that the State refused to entertain any communication from LeMaster and Eaves on behalf of other employees/the Union with regard to matters pertaining to mutual aid or protection. In part, Iowa Code section seeks to promote harmonious relationships between employees and employers. *AFSCME Iowa Council 61 Complainant & State of Iowa, Respondent*, 2020 WL 5944284, at *14–15; *Clay County v. Public Emp't Relations Bd.*, 784 N.W.2d 1, 5-7 (Iowa 2010). This requires the employer to, at a minimum, allow employees on behalf of representatives, to communicate such concerns. The State's refusal to listen to or entertain LeMaster and Eave's concerns on behalf of other employees was a violation

¹ PERB notes that PERB opinions from other states that do not have similar language to Iowa Code Chapter 20 are not binding on and provide little to no persuasive or assisting authority to the Board.

² It is not within the Board's jurisdiction to direct rules or policies of the State as an Employer and the Board notes that public forums, written communications, phone calls, etc. may all act to allow employees to exercise their rights under Iowa Code section 20.8(3) and it is outside the Board's authority to determine that a meeting versus any other method of communication.

of Iowa Code section 20.8(3) as it interfered with their concerted activity related to the mutual aid and protection of public employees.

For these reasons, pursuant to the District Court’s direction on Remand, the Public Employment Relations Board finds that the State’s refusal to listen or entertain questions regarding these matters on behalf of the Union, as well as refusing to have a meeting to hear such concerns, interfered or restrained such rights as they relate to “other mutual aid or protection” and was a violation of Iowa Code section 20.8(3) and prohibited practice under Iowa Code section 20.10(2)(a).

IT IS THEREFORE ORDERED that the State cease and desist refusing to entertain or listen to concerns communicated on behalf of represented employees related to mutual aid or protection, and, specifically in this case, those related to health and safety of represented union employees brought to it from labor organization representatives or other employees undertaking such concerted activity. The State shall post the attached Notice to Employees in places customarily used to the posting of notices to employees for a period of not less than thirty (30) calendar days.

DATED at Des Moines, Iowa, this 28th day of April, 2023.

PUBLIC EMPLOYMENT RELATIONS BOARD



Erik Helland, Board Member



Cheryl Arnold, Board Member

NOTICE TO EMPLOYEES OF THE STATE OF IOWA

ISSUED PURSUANT TO A DECISION OF THE IOWA PUBLIC EMPLOYMENT RELATIONS BOARD

The Iowa Public Employment Relations Board (PERB) has determined the State of Iowa (Department of Corrections-Iowa State Penitentiary), a public employer, was in violation of Iowa Code section 20.8(3) and committed a prohibited practice within the meaning of Iowa Code section 20.10(2)(a).

PERB has ruled the prohibited practice occurred in September of 2017 when the State refused to listen or entertain questions regarding safety concerns on behalf of the Union and representative employees, as well as refusing to have a meeting to hear such concerns. PERB has concluded that the employer interfered with, restrained or coerced the employees' exercise of their rights granted by Chapter 20 when it refused to listen or entertain questions regarding these matters on behalf of the Union and representative employees, as well as refusing to have a meeting to hear such concerns.

The sections of the Iowa Public Employment Relations Act, Iowa Code chapter 20, found to have been violated provide:

20.8 Public employee rights.

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 habited by this chapter or any other law of the state.

20.10 Prohibited practices.

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 the chapter.

To remedy the prohibited practice, the Public Employment Relations Board has ordered the State to cease and desist from any further like violations of the law and to post a true copy of this Notice for 30 days in those places customarily used for the posting of information to employees.

Any questions concerning this Notice or the State's compliance with its provisions may be directed to the Public Employment Relations Board at 515/281- 4414.

Issued April 28, 2023.

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