

SECTION 12.05 RECOGNITION AND UNION SECURITY

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This article defines who is covered by the collective bargaining agreement. It is found in Article II of the AFSCME, SPOC, and the UE/IUP Social Services and Science agreements.

AFSCME: “Employees excluded from the bargaining unit are all employees of the State of Iowa who are managerial, supervisory or confidential, part-time employees who are scheduled for less than seven hundred eighty (780) hours per fiscal year and who are scheduled for less than an average of fifteen (15) hours per week, and all other employees specifically excluded by the provisions of Chapter 20 of the Code of Iowa.”

UE/IUP: “Employees excluded from the professional social services bargaining unit and the science bargaining unit are all other employees of the State of Iowa and managerial, supervisory, confidential, and part-time employees who work less than seven hundred (700) hours per fiscal year and all other employees specifically excluded by the provisions of Chapter 20 of the Code of Iowa.”

SPOC: “Employees excluded from the public safety bargaining unit are all managerial, supervisory, confidential, part-time and all other employees of the State of Iowa.”

Union Membership and Contract Coverage

All employees in certified bargaining units are covered by their respective contract regardless of whether or not they pay membership dues or are otherwise involved with the union or its activities. Lists of the covered classifications are found in the collective bargaining agreement.

Exempt Employees

Certain employees are exempt from coverage by the collective bargaining agreement due to the nature of their job responsibilities and the potential conflict between the jobs and being covered by an agreement. Collective bargaining exempt status is granted on an individual position basis and is only authorized by the Iowa Department of Administrative Services – Human Resources Enterprise.

Collective bargaining exempt employees cannot be members of the union and cannot pay dues to the union.

Lead Work Duties by Non-Supervisory Employees

Employees covered by a collective bargaining agreement are not allowed to perform supervisory duties although they may be designated and paid as lead workers. As a lead worker, the employee may direct the work of others. Lead workers may not hire, fire, evaluate, discipline, or otherwise function as supervisors. They may, however, provide input to supervisors who take these actions.

Supervisors

Supervisors are exempt from the bargaining unit and cannot be members of a union, even in an inactive status, and cannot pay dues to a union. Supervisors must choose to either discontinue union membership or to accept a non-supervisory position. The only exceptions allowed are those inactive memberships in employee organizations that allow the supervisor to retain certain insurance benefits. These exceptions must be approved by the Iowa Department of Administrative Services – Human Resources Enterprise.

Supervisory Responsibilities Regarding Collective Bargaining

Supervisors are expected to administer the collective bargaining agreements and to present a neutral position regarding the collective bargaining process. Supervisors may provide factual information, such as how to sign up for payroll dues deduction or the names of union stewards, but must avoid any discussion concerning the advantages or disadvantages of union membership or the collective bargaining process.

Potential Prohibited Practices

Information to Unions: As the exclusive representatives of the bargaining unit members, the unions are entitled to information concerning the bargaining unit member or other members of the bargaining unit to assist them in processing grievances. If requested, information relied upon in taking action against an employee, or that is the subject of a grievance, may need to be shared with the appropriate union official.

The obligation to provide the information is triggered when the request is clear, definite and specific. It is reasonable to ask the union to make the request for information in writing. Medical records of the bargaining unit member(s) are not to be released.

Union Access to Break Room: The employer cannot engage in conduct which discriminates against the unions solely because of their status as unions. This includes not allowing the union access to non-work areas, such as break rooms, or not allowing the distribution of non-work related materials, such as union pamphlets, when liberal access is provided to others. If the employer has an absolute prohibition against this type of access, that is not discriminatory.

Union Access to Offices and Equipment: Employees are not allowed to use state offices and equipment, including letterhead paper, envelopes, postage meter, etc., for non-work-related matters.

Electronic Communication: Article II, Section 11 of the AFSCME agreement defines the term "electronic communication device" as the employer's telephone, cellular telephone, pager, facsimile machine, and the employer's e-mail system.

Representatives of the union whose names have been provided to the employer shall be permitted to use electronic communications devices subject to the following conditions:

1. The amount of time used by the union representative must be reasonable and must not unduly interfere with the performance of the union representative's work duties.
2. Communication is limited to the processing of grievances, matters pertaining to investigatory interviews, labor/management meetings, and other information normally posted on union bulletin boards.
3. No political campaign literature or material detrimental to the employer will be transmitted by the union representative.
4. Employees who use electronic communication devices will be responsible for payment of costs incurred by the employer which are in addition to normal operating costs.
5. Employer work rules and policies, not in conflict with this section, will apply.

Nothing creates restrictions on previously permitted uses or authorizes use in locations where prohibited due to health, safety, or security reasons.

Dues Deduction

Eligible employees may pay their union dues by payroll deduction. Union stewards or representatives are responsible for providing deduction cards to employees. Completed cards must be given to the agency's personnel assistant for processing to payroll. Employees must request cancellation of union dues deduction

in writing to their personnel assistant as well as to the union. Specific provisions for dues cancellations are found in Article 2 of each collective bargaining agreement.

For all collective bargaining agreements, supervisors must be careful not to do anything that could be construed as encouraging or discouraging union membership. This includes issuing any notices of the procedure for terminating dues deduction. In addition, management will not assist employees in terminating deductions by stockpiling or collecting and holding termination notices for processing at the appropriate time. It is the employee's responsibility to submit these notices at the appropriate times.

Some of the collective bargaining agreements provide for other types of union-sponsored deductions. Refer to the appropriate agreement or the personnel assistant for further information.

Bulletin Boards

Contract-covered employees are entitled to post union materials on one half of the agency's existing bulletin board space for informational postings to employees. As qualifying space increases, the union is entitled to a proportionate amount. Bulletin board space need only be provided in areas that are frequented by covered employees. No more than one half of existing eligible board space is allowed regardless of the number of contract-covered bargaining units represented at the facility or office. (Note: the SPOC agreement provides that space sufficient for three (3) 8 ½" x 11" notices must be allowed per bulletin board. The IUP agreement provides that IUP may put up 24" x 24" corkboards for postings if other space is not available.)

Posting is only allowed on bulletin board space that has been designated for union use. Certain bulletin boards are retained for management's exclusive use or for the posting of information to clients or residents.

Employees are entitled to a reasonable amount of paid work time to post information on union boards. Employees, however, must seek supervisory permission to leave the work unit or to stop work for purposes of posting. Supervisors will determine when posting will be allowed during the workday on the basis of the work to be done. Supervisors determine what constitutes a reasonable amount of time for posting of union materials at each location. The amount of time will vary depending upon the area that needs to be covered and the number of bulletin boards to be posted.

Transfer vacancy notices are posted on management's half of the bulletin boards while seniority lists are posted on the union's half of the boards.

Political campaign literature or material detrimental to the employer or the union may not be posted on bulletin boards. In addition, literature such as that promoting boycott of certain products or other literature not related to the union's function of representing employees is questionable and should be reported to the personnel officer for guidance about leaving or removing the material.

Management and union representatives should work together to resolve specific problems of appearance and arrangement of materials within available bulletin board space. No additional bulletin boards need to be provided solely for union use.

Specific provisions about bulletin boards are found in each collective bargaining agreement.

Union Leave

AFSCME:

1. Elected constitutional officers or appointed officials shall be granted an unpaid leave of absence for the term of office, not to exceed two years, unless that leave would cause a substantial hardship.

- a. Vacation or earned comp time may be used at the request of the employee in lieu of leave without pay.
 - b. Elected officers shall be released for monthly local/chapter meeting or quarterly Council 61 meetings unless the absence would cause substantial hardship to the unit. Ten (10) calendar days notice is to be submitted to the employee's supervisor. Meetings requiring less than 10 calendar days notice must be arranged through the DAS-HRE Chief Operating Officer. See the AFSCME agreement for other types of union leave and any applicable limitations.
2. If a leave must be disapproved for substantial hardship, contact your personnel officer prior to sending notice to the union.
 3. The following elements will be considered when deciding if leave will be approved:
 - a. Staffing level, if a minimum level must be maintained
 - b. Length of leave request
 - c. Amount of advance notice
 - d. Ability to reschedule other staff
 - e. Potential overtime costs
 - f. Potential cancellation of other prescheduled leaves (Note: A union officer's leave supersedes any other scheduled leave of bargaining unit members.)
 - g. Unusual or extraordinary events that are known or anticipated
 - h. Special skills possessed only by the employee requesting leave
 - i. Prescheduled training for the employee, or training that must be attended by others needed to cover for the employee requesting leave
 4. Leave will not be granted if it will reduce staffing below a present minimum staffing level, unless management has a practice of allowing the minimum staffing level to be exceeded in approving other leave.
 5. There must be no blanket prohibition to granting union leave.
 6. The criteria for granting union leave shall not differ from the criteria for granting other types of leave.
 7. Elected delegates shall be granted up to ten days annually to attend AFSCME or AFL-CIO conventions.
 8. Elected delegates or alternates shall be granted up to ten days to attend the biennial AFSCME International convention. Union representatives shall be granted up to ten days annually to attend union conferences.
 9. During union leave without pay of 30 calendar days or less, employees shall continue to accrue sick leave and vacation leave and the employer will continue to pay the employer's share of all insurance premiums.

10. At the request of the union president, for leaves of 30 calendar days or less, the employer will continue to pay the employee's wages so that the employee's retirement contribution will be uninterrupted.
 - The agency must submit the billing, including the dates and hours used to AFSCME within 30 calendar days of the end of the pay period in which the leave occurred (if a series of leave dates are requested, the billing must be submitted within 30 calendar days of the end of the pay period in which the first instance of leave occurred).
 - The billing must include gross wages including the employer's share of retirement and federal payroll taxes.
 - The union must reimburse the employer within 30 calendar days following receipt of the union's billing.
 - Failure of the union to reimburse the employer within 30 calendar days of receipt of the billing will nullify the provision for the remainder of the term of the agreement.
 - Notify the DAS-HRE personnel officer of any issues with union reimbursement of expenses.

Iowa United Professionals:

1. Elected constitutional officers or appointed officers shall be granted a leave of absence without pay of up to one year, unless the absence of an appointed official would cause a substantial hardship.
2. Union leave may be renewed for periods of up to one year.
3. Employees returning from an authorized union leave shall be returned to the employee's most recent prior position or one of like nature.
4. The employee may elect to use vacation or comp time in lieu of leave without pay.
5. Covered employees shall be granted up to 120 calendar days per employee, per fiscal year to conduct union business. During leaves of less than thirty (30) calendar days, employees will continue to accrue sick and vacation leaves, and the State's share of the insurance premium will continue to be paid by the agency. At the request of the union, the employer will continue to pay the employee's wages so that retirement contributions will not be affected. The union will reimburse the employer the gross wages including the employer's share of retirement and payroll taxes within fifteen (15) calendar days following date the wages were paid.
6. Elected delegates and alternates may take off up to ten days annually to attend the annual convention. The union will provide ten days advance notice of the employees who will attend the convention. Employees may elect to use vacation, comp time, or leave without pay.

SPOC:

1. Upon five days notice, the employer will attempt to reschedule days off for up to eighteen (18) employees to attend council meetings. Employees may elect to use comp time, vacation, or leave without pay.
2. Any bargaining unit member may attend general membership meetings.

- a. Employees on duty in the “patrol district” at the time of the meeting may travel to the meeting in the state vehicle.
 - b. Vacation, comp time, or leave without pay shall be used for time spent in attendance at the meeting.
 - c. The employer may maintain minimum staffing levels.
 - d. If the meeting extends beyond the workday, the employee shall not be in pay status during the return trip home.
 - e. The Council may use state facilities, if available; fourteen (14) calendar days advance notice must be provided.
3. One council officer may be granted up to two years leave without pay unless the absence would cause a substantial hardship.
- a. At the end of the two-year period, an extension may be requested.
 - b. The employee shall retain his or her original date of employment for seniority.
 - c. Upon return from leave, the employee shall return to the same job class, division, location, and assignment. If the position is not available, the employee shall be allowed to transfer to an open position in the same job class. If there are no open positions, the employee may bump the least senior person in the job class and division.

Union Activity

The collective bargaining agreements are specific about which union-related activities will be allowed on paid work time by employees. These activities include: posting on union bulletin boards, discussions between employee and steward regarding grievances, and investigating and attending grievance meetings. The SPOC agreement provides paid time for labor management meetings held during regularly scheduled hours of employment of the employee. The AFSCME agreement provides that all union representatives to Labor Management be in paid time during the meetings, regardless of the employee’s work schedule.

Other union activities, such as employee meetings, solicitation of employees, preparation of union literature, or discussions of union activities, will not be allowed during working hours or in work areas.

Discrimination

In the administration of collective bargaining agreements, employees shall not be discriminated against because of union affiliation or involvement.

Likewise, the union may not discriminate against employees because of their union or non-union affiliation. The union is obligated to fairly represent all employees in the bargaining unit, members and non-members alike.

Union Use of State Facilities during Non-Work Hours

This is intended to clarify the right of unions to utilize state facilities during non-working hours.

- 1. When an Iowa statute or an administrative regulation bans the use of a facility by the general public, unions shall also be denied use of that facility for union functions.

2. Absent a statutory or regulatory reference to use of your facility, and if you currently have a written policy denying use of the facilities for public purposes, you may continue to deny use of these facilities for union functions. If you permit community groups (e.g., civic organizations, youth groups, church groups, fraternal organizations, or other employee organizations) to use your facilities for functions, you must provide the unions the same right in accordance with item 4 below.
3. If statute or administrative rule specifically provides use of state facilities for civic purposes, you will afford unions the same privilege subject to the provisions of those rules as well as any other established procedures.
4. Those locations currently providing use of state facilities to other civic and employee organizations will extend the same rights to unions in accordance with the following guidelines:
 - a. Any organization wishing to use buildings or grounds must contact the responsible authority and obtain approval. Reasonable advance notice must be given to allow management time to review the appropriateness of the request. All requests should be answered as promptly as possible.
 - b. The appointing authority may disapprove requests when the requested facilities are scheduled for use by others, when the requested facility would disrupt normal operations, or for other valid reasons.
 - c. Arrangements may be cancelled in the event of emergencies or when the needs of the agency become paramount and require the use of the requested facility.
 - d. Determination of which facilities will be available for use and the granting of requests remains the sole discretion of the appointing authority.
 - e. The appointing authority will not discriminate in the application of this policy against any organization making such requests.
 - f. All users will be subject to the same conditions and restrictions established by local precedent in regard to proper use of facilities, fees charged, facilities available, rules of conduct, clean-up, etc.
 - g. Any misuse or abuse of the privileges granted may result in the suspension or termination of any rights granted under this section.

Union Visitation Guidelines

This is intended to clarify admission of union representatives to state facilities for purposes of visiting employees.

1. A reasonable number of union representatives (non-employees) have a right to access to the premises for visitation of employees.
2. Prior notice of the intended visit will be given by the union representative to the designated appointing authority. Notice must be given between 8:00 a.m. and 4:30 p.m. during normal workdays and excluding Saturday, Sunday, and officially designated holidays, except in emergency situations that arise outside these normal hours.
3. Every effort should be made to grant access during the period requested. The appointing authority reserves the right to schedule the time, date, and place of the meeting to ensure

minimum disruption to normal operations. Upon proper request, the meeting shall be scheduled with the employee(s) as promptly as possible.

4. Visitation shall be allowed in non-work areas such as cafeterias, lunch rooms, conference rooms, or visiting areas, and only while employees are on non-work time defined as their rest and lunch breaks or immediately before or after their normal hours of work provided that the facility is open. Meetings may be rescheduled to meet unanticipated emergencies that require employees to work during their regular non-work time.
5. Union representatives shall be confined to areas apart from the regular work stations and shall not be allowed to interfere with employees' work assignments or normal work operations. Union representatives are not to be granted access to restricted areas or maximum-security areas unless expressly authorized by the appointing authority. The place designated for visitation should afford a modicum of privacy.
6. Union representatives fall under the same guidelines as do any other members of the general public when visiting state facilities. They will be required to conform to established procedures for admitting visitors. Union representatives may be required to have a management escort when moving about the grounds and may also be required to submit to a personal search upon entering a correctional institution based upon the same objective criteria used for any visitor. Management shall not harass or intimidate union representatives in exercising their rights as defined in this guideline.

The rights granted representatives under this guideline may be suspended or terminated for willful violation of the provisions of this guideline, disorderly conduct, or for other valid reasons.

Guidelines for Supervisors in Dealing with Organizational Activity

The Iowa Public Employment Relations Act, signed into law in April 1974, declares in its opening section: "It is the public policy of the State to promote harmonious and cooperative relationships between government and its employees by permitting public employees to organize and bargain collectively." That same section guarantees to all public employees the right to assist and participate in union organizational activities. They are also guaranteed the right to refrain from such activities. Supervisors need to be familiar with this important aspect of the law.

Prohibited Practice:

Iowa Code section 20.10 states:

"It shall be prohibited practice for a public employer or his designated representative willfully to interfere with, restrain, or coerce public employees in the exercise of rights granted by this act."

Supervisors should be aware that any act or statement by them in connection with union organizational activity may be considered to be an act or statement by the State. A prohibited practice may inadvertently be committed by supervisors who are unaware of those actions that may and may not be taken with respect to union activity. It is most important to avoid any conduct that interferes with the employee's right to a free choice in deciding whether to participate in union organizational activities or to join a union.

The following guidelines have been prepared to enable supervisors to judge their behavior toward all employees and to assure that the State is not in violation of the Public Employment Relations Act.

Public Employer Rights:

Iowa Code section 20.7 states:

Public employers shall have, in addition to all powers, duties, and rights established by constitutional provision, statute, ordinance, charter, or special act, the exclusive power, duty, and right to:

1. Direct the work of its public employees.
2. Hire, promote, demote, transfer, assign, and retain public employees in positions within the public department.
3. Suspend or discharge public employees for proper cause.
4. Maintain the efficiency of governmental operations.
5. Relieve public employees from duties because of lack of work or for other legitimate reasons.
6. Determine and implement methods, means, assignments, and personnel by which the public employer's operations are to be conducted.
7. Take such actions as may be necessary to carry out the mission of the public employer.
8. Initiate, prepare, certify, and administer its budget.
9. Exercise all powers and duties granted to the public employer by law.

The following guidelines more specifically show what actions supervisors can take with regard to organizational activity.

Supervisors May:

1. Take normal disciplinary action for violations of stated rules. The State can be charged with the committing of a prohibited practice only if disciplinary action is aimed at discouraging union activity or affiliation.
2. Prevent solicitation or distribution of literature on the employee's working time. Union solicitation should be prevented during an employee's working time including solicitation by telephone. Union solicitation may not be prevented during an employee's free time (rest periods, lunch breaks) so long as it is not disruptive to other working employees and is conducted in a non-work area (break room, cafeteria, etc.).
3. Prevent non-employee union organizers from entering a working area for the purpose of literature distribution or solicitation.
4. Continue to operate as always as long as actions are not designed to encourage or discourage union activity or discriminate in favor of or against pro-union or non-union employees.

Right of Free Speech

The Public Employment Relations Act protects the supervisor's right to free speech. Iowa Code section 20.10 states:

"The expressing of any views, argument, or opinion...shall not constitute or be evidence of any unfair labor practice under any of the provisions of this act if such expression contains no threat of reprisal or force or promise of benefit."

Supervisors May:

1. Inform employees of their rights under the law.
2. Inform employees of any false or misleading statements made by anyone in an organizational effort.
3. Inform employees that they need not sign a union card in order to vote in a union organizing election.
4. State that unions often charge monthly dues, initiation fees and/or special assessments.
5. Advise employees to contact the Public Employment Relations Board for information about union petitions or election matters.

Prohibited Practices:

To give supervisors some guidelines regarding those actions which may be judged a violation of the employee's rights, the following actions would, in all probability, be a prohibited practice under Iowa Codes section 20.10:

Supervisors Cannot:

1. Attend any union organizational meetings.
2. Discipline an employee for union activity unless it can be shown the activity is being performed on work time.
3. Tell employees that the State will fine or otherwise punish them if they engage in union activity.
4. Purposely separate pro-union and non-union employees in a work situation.
5. Bar employees from organizational activities during rest periods, lunch hours, or other free time.
6. Ask employees about confidential union matters, such as who supports the union when meetings are held, etc. If an employee volunteers information, one may listen.
7. Ask employees what they think about a union or a union representative or whether they belong to a union or have signed up with one.
8. Ask employees how they intend to vote in an election.
9. Give financial or other assistance to a union.
10. Ask job applicants during an interview about union affiliations or preferences.
11. Make distinctions between pro-union and non-union employees when assigning overtime or desirable work.
12. Transfer or lay off employees on the basis of union activity or affiliation or take any other actions that adversely affect an employee's job or pay rate because of union activity or non-activity.
13. Threaten or otherwise coerce employees in an attempt to influence votes.

14. Promise a reward or future benefit in an attempt to influence votes.
15. Start a petition for or against a union or take part in its circulation if started by employees.
16. Prevent employees from wearing union buttons or insignia (except where this creates a safety hazard).
17. Call individual employees into an office to discuss any aspect of unionization. Any discussion should be at the employee's place of work.
18. Prevent employees from discussing unionization during working time if the discussion does not hamper work performance.
19. Be provoked into an argument over any aspect of unionization.
20. Conduct themselves in any way that might indicate to employees that they are being watched to determine who does and who does not participate in union activities.
21. Help employees to withdraw memberships.

No Reprisal

No reprisal action may be taken against an employee for disclosure of information by that employee to a member of the general assembly, the legislative service bureau, the legislative fiscal bureau or the respective caucus staff of the general assembly, or a disclosure of information which the employee reasonably believes is evidence of a violation of law or rule, mismanagement, a gross abuse of funds, an abuse of authority or a substantial and specific danger to public health or safety; unless disclosure is prohibited by statute.