IN THE IOWA DISTRICT COURT FOR CHICKASAW COUNTY

RICHARD CHAMPION,

ROBERT WINTERTON,

Petitioners,

Vs. CASE NO. CVCV004127

PUBLIC EMPLOYMENT

RELATIONS BOARD, ORDER ON

Respondent, JUDICIAL REVIEW

And

STATE OF IOWA (BOARD of REGENTS),

Intervenor.

On September 7, 2021, Petitioners' Petition for Judicial Review of Agency Action, as amended and substituted on July 31, 2020, came on for hearing. Hearing was conducted by telephone conference call; hearing was reported. Petitioners Richard Champion and Robert Winterton, Attorneys, appeared on their own behalf. The Public Relations Board appeared by Attorney Diana Machir. The public employer, State of Iowa, Iowa Board of Regents, appeared by Attorneys Andrew Tice and Ann Smisek. Argument was made and the petition taken under advisement.

On or about July 28, 2020, the Public Employment Relations Board, herein after referred to as PERB, electronically filed the agency record from "In the Matter of State of Iowa (Board of Regents); United Electrical, Radio & Machine Workers of America, Local 896; Richard Champion; and Robert Winterton and Mahmpud Khalil;" Case No. 2020 PERB 100834. In the "Certificate of Record" that accompanied the filings, PERB noted certain items were incapable of electronic filing and were being sent to the Chickasaw County Clerk of Court for non-electronic filing. Three (3) CDs, referred to as items 41, 45 and 46, were identified as the items submitted to the Clerk of Court for non-electronic filing. Item 41 contained oral arguments before the Board; Item 45 contained oral arguments before the ALJ on September 14, 2017; Item 46 contained the evidentiary hearing before the ALJ on September 22, 2017. On September 22, 2021, the undersigned learned the Clerk of Court was not in possession of the CDs (Items, 41, 45 and 46). Efforts were made to secure copies of the CDS. Ultimately, the recordings in question were submitted on a flash drive. The undersigned received this on or about October 29, 2021.

The Court, having considered the agency record and arguments made, now enters the following:

FACT FINDINGS

1. Petitioners Richard Champion and Robert Winterton were non-resident students who attended the University of Iowa College of Law. Upon acceptance to the College of Law, they were awarded financial aid packages. They were provided scholarships to cover nonresident tuition costs for their first year of law school. In their second and third year, however, Petitioners were informed their scholarship award would only cover resident tuition cost. To make up the difference, each Petitioner was guaranteed a research assistant position as part of his financial aid package. This position qualified him for resident tuition in the second and third years of law school. In the 2017-2018 school year this provided each Petitioner with a reduction in tuition of approximately $18, 740 for the academic year. In addition to the tuition reduction, each received salary compensation in the amount of $1,087.50 per semester. Petitioners were classified quarter-time law research assistants and expected to work 10 hours a week during the academic year. They were required to report their work hours to the University. In instances when a law research assistant failed to meet the 10-hour weekly requirement, the University could require the student to pay the additional (non-resident) tuition; however, the University has not done this. In fact, students deficient in their work hours, have still been paid at the quarter-time appointment salary rate. In addition, as long as the student is classified a quarter-time law research assistant, the student continues to qualify for the resident tuition reduction.

Materials generated by the College of Law describe the Research Assistant (RA) position as an opportunity to work 10 hours per week with a member of the law school faculty and a wonderful way to enhance the student's legal education and add experience to their resume.

The Research Assistant Fact Sheet notes the RA positions are primarily intended as learning experiences, which contribute to the student's progress toward a program of study. Petitioners were informed an assistantship provides an opportunity to enhance a student's legal education through professional training as a legal employee, add experience to a resume, receive mentoring and form lasting professional relationships with law school faculty. In addition, they were informed an RA position does not provide academic credit.

Both Champion and Winterton accepted the financial aid packages offered to them. They held positions of Law Research Assistants (RA) while attending the University of Iowa College of Law.

During the 2017-2018 academic year there were more than 100 law research assistants assigned to work for faculty members. In the absence of these research assistantships, the University would not have hired 100 plus employees to assist faculty members in the capacity of a law research assistant.

2. On May 19, 2017, Richard Champion filed a Petition for Clarification of Bargaining Unit with the Public Employment Relations Board, hereinafter referred to as PERB, requesting that PERB clarify whether Law Research Assistants (FL19) with salaried quarter-time appointments who serve law professors and are employed by the University of Iowa are within the United Electrical, Radio, & Machine Workers of America, Local 896 (COGS) bargaining unit, Case No. 5463. Petitioner Champion contends law research assistants who serve law professors are within the order of certification bargaining unit description. Pertinent portions of the description are as follows:

INCLUDED: All currently enrolled graduate and professional students with a 25% or more appointment (i.e. teaching at least one course and/or providing service for at least 10 hours/week) employed as:

Teaching Assistants (FT19), Research Assistants (FR19), and Law Research Assistants (FL19) who provide services to the University for salary compensation.

EXCLUDED: Research Assistants (FR19 or FL19) whose appointments are (a) primarily a means of financial aid which do not require the individuals to provide services to the University, or (b) which are primarily intended as learning experiences which contribute to the students' progress toward their graduate or professional program of study or (c) for which the students receive academic credit.

3. The Public Employer, State of Iowa (Board of Regents) resisted the petition contending that students who work in salaried, quarter-time positions as Law Research Assistants that serve law professors are excluded from the bargaining unit due to one or more of the exclusions , i.e. 1(a), 1(b), and/or 1(c), found in the bargaining unit description.

4. Robert Winterton subsequently intervened and joined Champion's unit clarification petition. An evidentiary hearing was held September 22, 2017, before PERB Administrative Law Judge Jasmina Sarajlija. Post-hearing briefs were submitted November 20, 2017.

5. On February 11, 2019, PERB Administrative Law Judge Sarajlija, hereinafter referred to as "ALJ," issued her Proposed Decision and Order. She found ambiguity existed regarding the meaning of the phrase "provide services to the University." She noted Petitioners assert the work they complete for assigned law professors, such as legal research, writing and editing, in exchange for salary compensation amounts to providing a service to the University. The ALJ noted the employer contends the phrase "provide services to the University" was intended to differentiate between law research assistantships that were created to fulfill a business need of the University, ie., the University needs employees in those positions, from the rest of the law research assistantships that were created to benefit the student, such as through financial aid packages, learning experiences, or academic credit. With regard to the categories of research assistants excluded from the bargaining unit, the ALJ noted the need to determine the "primary" purpose of the appointment. She noted exclusion 1(c) deals specifically with assistantships created for the purpose of academic credit. She found exclusion 1(b), therefore, to be broader than just academic credit. The ALJ noted one factor probative to the determination whether a position falls within an existing unit is an examination of how the position has traditionally been treated by the parties. The ALJ concluded the Law Research Assistants were excluded from the unit. She provided for dismissal of the Petition.

On March 2, 2019, Petitioner filed a Notice of Appeal. Appellate briefs were submitted, followed by oral arguments on June 25, 2019.

On April 22, 2020, PERB issued its Decision on Appeal. The Board concluded Law Research Students were not in the Unit; the Board dismissed the Petition. Petitioner requested rehearing; that application was denied.

6. Petitioners filed their original Petition for Judicial Review of Agency Action on June 18, 2020; their Amended and Substituted Petition for Judicial Review of Agency Action was filed July 31, 2020; Respondent PERB filed its Answer to the amended petition on August 19, 2020.

Petitioners do not dispute the Factual Findings set forth in PERB's Decision and Order. PERB found the ALJ'S Findings of Fact fully supported by the record. Those facts include the history of the bargaining unit at issue. For instance:

a. An organization known as Campaign for Organizing Graduate Students (COGS) began efforts to form a bargaining unit in 1993. COGS and the University engaged in considerable discussion, before the parties ultimately stipulated to the bargaining unit description, briefly described in Paragraph 2 above. In their stipulation, the parties differentiated between assistantships created to fulfill a business need of the University from those created to primarily benefit the student. Because they agreed that only those research assistants who were fulfilling a business need would be included, the parties adopted language in the unit description that includes only students "who provide services to the University." With regard to the excluded positions, the parties agreed upon language that assistantships created for the purpose of providing financial aid, or serving as a learning experience, or providing academic credit for the student are excluded from the unit.

b. For an anticipated certification election in early 1994, the University sought to compile a list of eligible voters consisting of graduate and professional student employees included in the unit. The University provided an explanation of exclusions. However, a certification election was not held at that time.

In the fall of 1994, COGS requested a list of teaching and research assistants who qualified for unit inclusion for the 1994-95 academic year. The University compiled a list of quarter-time appointments and asked its leadership to identify excluded positions, as explained by the University. However, a certification election was not held at that time.

In May 1995, the University sought to readily identify students included in the unit by assigning each a certain code at the time of appointment. The University explained the new classification system to its leadership, providing an explanation as to persons covered under the different exclusions.

c. In 1996, the United Electrical, Radio and Machine Workers of America, Local 896 (UE) petitioned PERB to conduct a representation election for the stipulated unit of teaching and research assistants. The university's list of eligible voters did not include law research assistants who worked for faculty members. UE did not object to the unit exclusion of these students. As a result of the election, UE was certified as the unit's exclusive representative.

UE and the Board of Regents have negotiated successive collective bargaining agreements since UE's certification. The parties have not treated law research assistants who work for faculty members as included in the unit or covered by the parties' bargaining agreement. On several occasions since 1996, UE has questioned the unit status of certain appointments, including those in the college of law. In December of 2001, UE filed a contract grievance alleging certain graduate employees in the college of law were not receiving the negotiated salary pursuant to the collective bargaining agreement. In response to the grievance, the University denied violation and referenced the parties' prior agreement that research assistant positions created for the purpose of benefitting the student through financial aid, learning experiences, or academic credit are excluded from the unit. UE did not pursue the grievance further or seek to clarify unit composition with PERB. There is no evidence UE filed any further grievances regarding the application of the exclusion criteria.

7. Petitioners seek judicial review identifying Iowa Code Section 17A.19(10)(h) as the basis for its petition and asserting PERB has not followed its own "prior practice or precedents." Specifically, Petitioners assert PERB has not adhered to its holdings in *Eastern Iowa Comm. Coll. Higher Educ. Ass'n and Eastern Iowa Comm. Coll. Dist.,* 1982 PERB 2110 and in *Saydel Comm. Sch. Dist. And Pub., Prof'l &*

Maint. Emps., Local 2003, 1999 ALJ 6056. Petitioners appear to cite *Sayde*l for the proposition PERB should examine the language of the unit description and construe words and phrases according to the context and approved usage of the language. This includes utilizing dictionary definitions. Petitioners then provide the definitions of various words, in isolation.

PERB denies it failed to employ the correct analysis in reaching its conclusion

Petitioners ask the Court to reverse PERB's Decision and Order, order Respondent to pay the costs of the action and order such other relief that is just and equitable. PERB asks the Court to affirm the agency action and tax the costs of the proceeding to Petitioners.

CONCLUSIONS OF LAW

1. Judicial review of agency decisions is governed by Iowa Code Section 17A.19(10). The court may grant relief if the agency action has prejudiced the substantial rights of the petitioner and the agency action meets one of the enumerated criteria contained in section 17A.10(a) thru (n). *Burton v. Hilltop Care Ctr.,* 813 N.W.2d 250,255-256 (Iowa 2012).

Citing Iowa Code Section 17A.10(h), Petitioners allege the agency action is invalid as it is:

Action other than a rule that is inconsistent with the agency's prior practice or precedents, unless the agency has justified that inconsistency by stating credible reasons sufficient to indicate a fair and rational basis for the inconsistency.

In *Office of Consumer Advocate v. Iowa Utilities Bd.,* 770 N.W.2d 334, 341 (Iowa 2009), the Iowa Supreme Court noted paragraph (h) was intended to amplify review under the unreasonable, arbitrary, capricious, and abuse of discretion standards.

The Iowa Supreme Court has explained these terms. "An agency's action is 'arbitrary' or 'capricious' when it is taken without regard to the law or facts of the case….Agency action is "unreasonable" when it is clearly against reason and evidence." *Soo Line R.R. v. Iowa Dep't of Transp*., 521 N.W.2d 685, 688-89 (Iowa 1994). An abuse of discretion occurs when agency action "rests on grounds or reasons clearly untenable or unreasonable." *Schoenfeld v. FDL Foods, Inc*., 560 N.W.2d 595, 598 (Iowa 1997). We have said an "abuse of discretion is synonymous with unreasonableness, and involves lack of rationality, focusing on whether the agency has made a decision clearly against reason and evidence.'" Id.

Dico, Inc. v. Iowa Employment Appeal Bd., 576 N.W.2d 352, 355 (Iowa 1998).

In *Millenkamp v. Millenkamp Cattle, Inc.,* 832 N.W.2d 384 (Unpublished Opinion Iowa Court of Appeals April 10, 2013) the Iowa Court of Appeals held:

Paragraph (h) "requires consistency in reasoning and weighing of factors leading to a decision tailored to fit the particular facts of the case." *Office of Consumer Advocate v. Iowa Utils Bd.,* 770 N.W.2d 334, 341-42 (Iowa 2009). It does not require the "application of rigid rules based solely on prior decisions," especially where the statutory scheme calls for a case-by-case analysis. *Anthon-Oto Comm. School Dist. v. Public Employment Relations Bd.,* 404 N.W.2d 140, 144 (Iowa 1987).

2. The burden of demonstrating the invalidity of agency action is on the party asserting it. **See:** Iowa Code Section 17A.19(8)(a).

3. As identified by PERB in its Decision and Order, the purpose of a unit clarification proceeding is to discern what positions are "encompassed by the wording of the present bargaining unit description." *Clay Cnty. & Int'l Union of Operating Engineers, Local 234*, 2011 PERB 8290 at 5 (quoting *Eastern Iowa Cmty. Coll. Higher Educ. Ass'n & Eastern Iowa Cmty. Coll. Dist.,* 1982 PERB 2110). If the description unambiguously includes or excludes a position at issue, the inquiry ends. *Woodbury Cnty. & Commc'n* Workers of Am., Local 7177 & AFSCME Iowa Council 61, 2015 PERB 8792. 8794 & 8795 at 13; *Clay Cnty.,* 2011 PERB 8290 at 5. However, if the unit description is ambiguous with regard to the position's status then examination of other probative factors is required. *Woodbury Cnty*., 2015 PERB 8792, 8794 &8795 at 13.

In the instant case, ambiguity was found in the meaning of the phrase "provide services to the University." Furthermore, it was found that an evaluation of the applicability of the exclusion categories to the group of law research assistants who work for faculty members, required looking beyond the unit description in order to determine the "primary" purpose of their appointments.

4. The *Saydel* case, cited by Petitioners, was a "proposed decision" by an Administrative Law Judge; it was not a Board decision. It does not constitute authoritative precedent binding upon PERB. There is no binding or controlling legal authority that requires all administrative law judges or PERB to review dictionary definitions in order to complete a unit clarification analysis.

With regard to probative factors, PERB has set forth the following guidance: "… attention is turned to other factors which might be probative of whether the position falls within the determined unit, including such matters as whether it has traditionally been treated as such, whether similar positions or persons who perform similar duties are included in the unit, and like factors. But again, the focus is on those matters probative of whether the position is and has been in the bargaining unit, not whether it should be or should have been placed in the bargaining unit." Id. (Emphasis added).

In the instant case, the ALJ and PERB properly looked at the history of how the Board of Regents and COGS treated the law research assistants. The evidence introduced at the hearing before the ALJ established the law research assistants assigned to faculty have not traditionally been treated as included in the bargaining unit. In contrast, the law research assistants who provided a service to the University's College of Law that otherwise would have required the hiring of an employee, that had duties not designed to add to the law student's legal skill set, and did not secure their position as primarily a financial aid package, were included in the bargaining unit. Substantial evidence was introduced at the hearing that the research assistant positions assigned to faculty are a financial aid tool the law school uses to attract minority and out-of-state candidates that might not otherwise consider attending the University's law school. Students are informed in their acceptance letter of the conditions of their financial aid **package** which includes a research assistant position for the student's second and third years of law school. (Emphasis added). The student is also told the research assistant position are primarily intended as learning experiences which contribute to the student's progress toward a program of study.

5. From the record before it, PERB found the primary purpose of the law research assistant appointments, the position held by Petitioners, is to provide learning experiences and financial aid.

PERB concluded the law research assistants who work for faculty are not and have not been in the presently constituted bargaining unit. PERB dismissed Richard Champions petition for clarification of bargaining unit.

In this judicial review, Petitioners have failed to demonstrate the invalidity of PERB's Decision and Order.

There is no evidence in the record PERB's decision is arbitrary, capricious or unreasonable. Its decision does not rest on grounds or reasons clearly untenable or unreasonable.

PERB's Decision and Order not inconsistent with its prior practice or precedents.

IT IS ORDERED, ADJUDGED AND DECREED

1. The Decision and Order entered by the Public Relations Board on April 20, 2020, is AFFIRMED. The Petition for Clarification of Bargaining Unit filed by Richard Champion is deemed DISMISSED.

2. The "Petition for Judicial Review of Agency Action," as amended, is DISMISSED. Costs are assessed to Petitioners Richard Champion and Robert Winterton.

The Clerk shall distribute copies of this Order.

State of Iowa Courts

Case Number	**Case Title**
CVCV004127	RICHARD CHAMPION ET AL VS PUBLIC EMPLOYMENT RELATIONS BOARD
Type:	DISMISSED PER COURT

So Ordered

Margaret L. Lingreen, District Court Judge,
First Judicial District of Iowa

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