STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

UE LOCAL 893/ IOWA UNITED PROFESSIONALS, Complainant, and STATE OF IOWA (DEPARTMENT OF HUMAN SERVICES), Respondent.	CASE NO. 100024

PROPOSED DECISION AND ORDER

The Complainant, UE Local 893/Iowa United Professionals (UE/IUP or UE), filed a prohibited practice complaint with the Public Employment Relations Board (PERB or Board) pursuant to Iowa Code section 20.11 and PERB rule 621—3.1(20). The complaint alleges that the Respondent, the State of Iowa, Department of Human Services, committed prohibited practices within the meaning of Iowa Code sections 20.10(1), and 20.10(2)(*a*), (*e*), and (*f*) when the Department of Human Services (DHS) implemented a DHS attendance policy on January 16, 2015, with new notification requirements without first bargaining with UE. The State admits that it implemented a new attendance policy for DHS employees, but denies it committed a prohibited practice by its actions.

Prior to proceeding to hearing, the parties attempted to informally resolve their dispute in mediation. When negotiations failed in late 2016, the case was assigned to the undersigned administrative law judge and an evidentiary hearing was scheduled for December 14, 2016. Pursuant to the parties' mutual agreement, the hearing was cancelled and the parties filed stipulated facts and joint exhibits

on December 14, 2016. Both parties filed briefs, the last of which was filed on February 10, 2017. UE/IUP is represented by attorney Nate Willems and the State is represented by attorney Jeff Edgar.

Based upon the entirety of the record, as well as the parties' arguments, I conclude that UE established the State's commission of prohibited practices.

I. FINDINGS OF FACT.

A. Stipulated Facts. The filed stipulated facts are as follows:

> 1. Prior to January 16, 2015, DHS institutions maintained attendance policies specific to their respective institutions.[1] *See Ex. A, attached hereto.*
> 2. On or about January 16, 2015, DHS implemented an attendance policy governing all institutions. *See Ex. B, attached hereto.*
> 3. Prior to implementation of this policy, notice was provided to the Complainant pursuant to Article XI, Section 1 (Work Rules) of the collective bargaining agreement in place at the time the policy was to be issued.
> 4. The policy implemented on January 16, 2015, contained, among other provisions, a twenty-four (24) hour notice requirement in order for [an] absence to be considered "scheduled." Employees could receive an occurrence for an unscheduled absence.[2] An unscheduled absence could include an illness-related absence. If an employee accumulated six (6) unscheduled absences in a twelve (12) month period, they could receive discipline. Policies in existence prior to January 16, 2015, did not contain identical provision[s] regarding unscheduled absences, notice and occurrences. The Employer acknowledges this policy represents a change for at least some DHS employees. However, the Employer believes this simply amounted to a change of a work rule and is not a mandatory subject of bargaining. The Union believes this change represents a change to a leave of absence.

---

[1] "Institutions" are identified as the Glenwood Resource Center, Woodward Resource Center, Cherokee Mental Health Institute, Independence Mental Health Institute, Civil Commitment Unit for Sexual Offenders and the State Training School.

[2] Employees could also receive an occurrence for a tardy, failure to follow the institution-specific call-in procedure and for a "no-call no-show."

5. Complainant filed the above[-]captioned action secondary to implementation of the subject attendance policy. *See Complainant's Prohibited Practice Complaint on file in this matter.*

6. DHS revised the subject attendance policy in December, 2015. *See Ex. C, attached hereto.*

7. The revised policy was implemented on December 29, 2015[,] secondary to notice that was provided pursuant to Article XI, Section 1 of the collective bargaining in place between the parties at the time the notice was issued.

8. The January 16, 2015 attendance policy and the revised December 29, 2015 policy were/are applicable to approximately twenty-eight (28) bargaining unit employees represented by Complainant working at the institutions.

B. Institutional Attendance Policies (Exhibit A). The parties' joint Exhibit A consists of DHS institutional attendance policies, which are summarized in relevant parts:[3]

1. *Glenwood Resource Center (GRC):* A "scheduled" absence requires 48-hour advance approval. Tardiness is defined as an employee starting a shift six or more minutes late and requires 15 minutes prior notification or pay is docked. After two hours, it is considered an absence. There is a set of progressive disciplinary steps for "occurrences" of unscheduled absences and another for each "occurrence" of tardiness. If an employee calls in sick, but substitutes other earned time, it is still an occurrence. A committee reviews a case before discipline is implemented.

2. *Woodward Resource Center (WRC):* Employees must provide 60 minutes' notification prior to the start of a shift for an absence and 15 minutes notification for tardiness. An employee's hours of work are extended by the tardiness up to 15 minutes. Thereafter, the employee's pay is docked. Tardiness exceeding four hours

[3] The State Training School attendance policy was not included in Exhibit A.

is considered an absence. There is a list of exempted absences such as "scheduled vacation, holiday, or compensatory time." The policy outlines progressive disciplinary steps for each occurrence of an unscheduled absence. A committee reviews a case before discipline is implemented. Appendix A to the policy sets forth "Variances to Call-In Timeliness" for different areas of WRC. For instance, some employees are required to call in "[b]y the beginning of the assigned work shift."

3. *Civil Commitment Unit for Sex Offenders*: Employees are expected to obtain supervisory approval for time-off, notify their supervisors prior to the start of a shift when they cannot begin their duties on time, and complete time-off forms. Failure to comply with these responsibilities subjects the employee to "progressive administrative consequences." "Unexcused absent time" is defined as "time off without pay in excess of ½ hour which has not been scheduled and previously agreed to between the employee and supervisor." The policy outlines progressive disciplinary steps for both absences and tardiness.

4. *Independence Mental Health Institute*: This policy provides that all leave requests, with the exception of those charged to sick leave, must be prescheduled and preapproved. All others are documented as "unauthorized," including tardiness, and result in leave without pay. For sick leave, employees are required to notify their supervisors of an absence "prior to the start of [a] shift." Discipline may result from failure to comply with the procedures.

C. January DHS Attendance Policy (Exhibit B). The umbrella policy, implemented on January 16, 2015, provides that it is to "ensure consistent enforcement of attendance" at DHS facilities. An absence is defined as an employee's failure "to be at his or her assigned or scheduled work location, post or

station, on time and ready to work" and includes "an employee's early departure from a scheduled shift without prior approval."

An "unscheduled absence" occurs when an employee fails to obtain prior approval and/or fails to follow the institution's established leave procedure. However, the attachment to the policy requires 24-hour advance approval or the absence is considered "unscheduled." An "Occurrence or Incident" is an employee's failure to follow call-in procedures; a No Call/No Show; a tardy; or an unscheduled absence during a scheduled shift. "Excessive [a]bsences" occur when an employee has six or more occurrences or incidents within a 12-month rolling period. If an employee calls in sick, but substitutes other earned leave, the unscheduled absence is still considered an occurrence.

Attached to the policy is a "DHS Facility Leave Procedure" directing employees to submit a request for leave and providing in relevant part:

> **Notice Requirements: Scheduled leave(s) must be submitted at least 24 hours in advance of the requested absence.**
>
> *Management may increase the 24 hour minimum for specific work units/location based on operational requirements. ...*
>
> *Notice requirements in excess of 24 hours will be posted within work units.*
>
> Management may not be able to immediately approve the requested leave until 1 hour prior to start of the scheduled shift for the date(s)/time requested. ...
>
> Failure to submit an **APPLICATION FOR LEAVE** 24 hours in advance of the requested absence, and obtain approval, will result in an unscheduled absence.

D. December DHS Attendance Policy (Exhibit C). DHS implemented the revised attendance policy in December, 2015. Under this policy, an "absence" occurs when an employee is not at work for more than four hours while a "tardy" occurs when an employee arrives late and is not at work for less than four hours.

An "occurrence" is defined as an employee's failure to be at his or her assigned work location on time, or, when the employee takes an early departure without management approval. There are progressive disciplinary steps for both absences and tardy occurrences. A review committee conducts a hearing before discipline is implemented. Attached to the policy is a one-page "DHS Facility Leave Procedure" directing employees to submit a request for leave and providing in relevant part:

> **Notice Requirements: Scheduled leave(s) must be submitted at least 24 hours in advance of the requested absence.**
>
> *Management may increase the 24 hour minimum for specific work units/location based on operational requirements.*
>
> *Notice requirements in excess of 24 hours will be posted within work units.*
>
> Management may not be able to immediately approve the requested leave until 1 hour prior to start of the scheduled shift for the date(s)/time requested. ...

II. CONCLUSIONS OF LAW.

UE's complaint alleges the State made a unilateral change in the section 20.9 mandatory topic "leaves of absence" when the State changed its attendance policy without bargaining the change with UE. Thus, UE argues the State committed prohibited practices within the meanings of Iowa Code sections 20.10(1) and 20.10(2)(*a*), (*e*), and (*f*), which provide,

> **20.10 Prohibited practices.**
>
> 1. It shall be a prohibited practice for any public employer, public employee, or employee organization to refuse to negotiate in good faith with respect to the scope of negotiations as defined in section 20.9.
>
> 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 this chapter.
>
> . . .
>
> *e.* Refuse to negotiate collectively with representatives of certified employee organizations as required by this chapter.
>
> *f.* Deny the rights accompanying certification granted in this chapter.

Iowa Code § § 20.10(1), 20.10(2)(*a*), (*e*), and (*f*).[4]

A. Whether December Policy/Compliance Renders Complaint Moot. As a preliminary matter, the State asserts UE's challenge is moot because UE's prohibited practice complaint relates to the January 16 policy, which was later replaced by the December 29 attendance policy. UE argues the December policy still contains the 24 hours' notice requirement, which is a change to the mandatorily negotiable subject "leaves of absence."

In any event, the State's subsequent implementation of the December policy does not render UE's complaint moot. PERB has recognized the uniqueness of a prohibited practice proceeding and declined to dismiss cases when the Respondent public employer has subsequently come into compliance. *See, e.g., Sioux City Educ. Ass'n & Sioux City Cmty. Sch. Dist.*, 1980 PERB 1560 (Board refused to dismiss failure to bargain in good faith complaint although the parties had subsequently reached a voluntary agreement). A complaint that is otherwise found to be a prohibited practice does not cease to be one upon the settlement of the circumstances giving rise to the complaint. *See Oelwein Cmty. Educ. Ass'n & Oelwein Cmty. Sch. Dist.*, 1980 ALJ 1593 at 11 (ALJ rejected Respondent's argument that the underlying issues were moot because the parties had reached a voluntary contract settlement). *See also Coll. Cmty. Educ. Ass'n & Coll. Cmty. Sch. Dist.*, 1981 ALJ 1953 (ALJ denied a motion to dismiss the prohibited practice complaint although the parties had subsequently reached a letter of understanding).

---

[4] All Code references are to Iowa Code (2017).

Accordingly, the State's assertion that the issue is moot is not persuasive and its motion to dismiss is denied.

B. Whether the State Made a Unilateral Change to a Mandatorily Negotiable Matter. The employer's duty to bargain in good faith arises before an employer can implement changes to mandatorily negotiable subjects during the term of an existing collective bargaining agreement. *See Des Moines Educ. Ass'n & Des Moines Indep. Cmty. Sch. Dist.*, 1975 PERB 516 at 6 (Board noted the employer may "not institute changes in negotiable conditions of employment without, at a minimum, allowing the certified representative input into that decision-making process"). The law is well settled that an employer's implementation of a change in a mandatory subject without first fulfilling its bargaining obligation constitutes a prohibited practice within the meaning of Iowa Code sections 20.10(1) and 20.10(2)(*a*), (*e*), and (*f*). *Des Moines Ass'n of Prof'l Fire Fighters, Local 4 & City of Des Moines*, 2014 PERB 8535 at App. 16.[5] *See also Cedar Rapids Ass'n of Firefighters, Local 11 & City of Cedar Rapids*, 1993 PERB 4610, 4712, 4715, & 4729 at 15.

In order to prevail in an unlawful change case, a complainant thus must show that (1) the employer implemented a change; (2) the change was to a mandatorily negotiable matter; and (3) the employer had not fulfilled its bargaining obligation before making the change. *Des Moines Ass'n of Prof'l Fire Fighters*, 2014 PERB 8535 at App. 16-17. The complainant bears the burden of establishing each

---

[5] Case *aff'd* on the merits, *Des Moines Ass'n of Prof'l Fire Fighters, Local 4 v. Iowa Pub. Emp't Rel. Bd.*, No. CVCV047951 (Polk Cnty. Dist. Ct. 02/16/2015), *aff'd, Des Moines Ass'n of Prof'l Fire Fighters, Local 4 v. Iowa Pub. Emp't Rel. Bd.*, 881 N.W.2d 471 (Table) (Iowa App. Ct. 2016).

element of the charge. *Int'l Ass'n of Prof'l Firefighters, Local 2607 & Cedar Rapids Airport Comm'n*, 2013 PERB 8637 at 10.

The employer's bargaining obligation differs depending upon whether the mandatorily negotiable term subject to change is "contained in" or not "contained in" the collective bargaining agreement. *Des Moines Educ. Ass'n & Des Moines Indep. Cmty. Sch. Dist.*, 1978 PERB 1122 at 4. In this case, UE presumably agrees that the alleged change by the State was to a mandatorily negotiable matter not contained in the collective bargaining agreement.[6] When the proposed mid-term change is to a mandatory term not "contained in" the contract, as in this case, the change may be lawfully implemented by the employer only after it has given the certified employee representative notice of the change and, if requested, the opportunity to negotiate it to impasse. *Id.*; *Waterloo Police Protective Ass'n & City of Waterloo*, 2001 PERB 6160 at 3.

1. Whether a change took place. The first step in analyzing a unilateral change case is to determine whether there was a change, and, if so, the date it was implemented. *See AFSCME Iowa Council 61 & State of Iowa (Dept. of Corrections)*, 2014 ALJ 8693 at 17. The "status quo" of procedures, policies, or practices that were in operation at the time of the alleged change are identified to ascertain whether a change actually occurred. *See, e.g., Int'l Union of Operating Eng'rs, Local*

---

[6] UE asserts that "the State has a statutory obligation to meet and bargain in good faith prior to implementing any change." UE brief at 2. The bargaining duty thus identified is one which is required before an employer can make a change to a mandatorily negotiable matter *not "contained in"* the contract. (Emphasis added.) In contrast, neither party has a duty to discuss any proposed mid-term modification of any mandatory term "contained in" the contract and neither party may lawfully insist on such a discussion. *AFSCME/Iowa Council 61 & Louisa Cnty.*, 2011 PERB 8146 at 11 (quoting *Des Moines Educ. Ass'n*, 1978 PERB 1122).

234 & Chickasaw Cnty., 2013 ALJ 8600 (determination that there had not been a change in "health insurance" because the insurance policy remained status quo).

In the present case, the parties stipulated, "Policies in existence prior to January 16, 2015, did not contain identical provision[s] regarding unscheduled absences, notice, and occurrences." An examination of these institutional policies, as reflected in the findings, reveal the "status quo" of attendance practices, procedures, and requirements did in fact change when DHS implemented its umbrella policy in January. The new policy required a minimum 24 hours' notice/request for an absence, allowed for a possible one hour's notice of management approval, changed the meaning of an "unscheduled" absence, and counted occurrences for disciplinary action within a 12-month period.[7] These are requirements for approved leave that did not exist with the institutional attendance policies in effect.

The State's assertion that the change was not "significant enough" to give rise to a bargaining obligation is not persuasive. The State is correct that not every change in non-contractual procedures, policies, or practices gives rise to a bargaining obligation if the change is not substantive. *See Cedar Rapids Ass'n of Fire Fighters, Local 11*, 1995 PERB 4898 (Board found changes to sick leave policy were minor, insubstantial, or merely clarifying and did not create new obligations for employees). However, changes to mandatory subjects that place new or substantively different terms on employees are changes that require the employer to first fulfill its bargaining obligation. *See id.* at 12-13.

---

[7] Change(s) to consequential disciplinary action for an absence is not at issue.

While a notification process for absences was part of the status quo of the institutional attendance policies, the January attendance policy's 24 hours' minimum notice created a substantively different obligation and terms for employees. At the Independence Institute and the Civil Commitment Unit, employees are required to provide notice "prior to the start of shift." Requiring these employees to submit a request form at least 24 hours in advance is a significantly greater obligation. The Woodward Institution's status quo notification requirement of sixty minutes prior to the start of a shift can be characterized as significantly changed by a 24 hours' minimum notice as well. Also, the January policy provides management may not give approval until one hour prior to the start of the shift. These notice and approval requirements were not "insignificant," but were new or substantially different obligations and terms for bargaining unit employees.

2. *Whether there was a change to a mandatorily negotiable subject.* UE asserts the State's new DHS umbrella attendance policy was a change to the section 20.9 mandatory subject "leaves of absence." The State maintains the change was merely to work rules.

Applicable law. To determine the negotiability status of a change in policy, the question itself, and its proper analysis, is the same as those presented in negotiability disputes arising during collective bargaining. *See State Police Officers Council & State of Iowa*, 2016 ALJ 100065 at 6. With respect to this determination of negotiability status, PERB and the courts apply the two-pronged approach endorsed in *Waterloo Educ. Ass'n v. Pub. Emp't Rel. Bd.*:

> The first prong for determining whether a proposal is subject to collective bargaining, the threshold topics test, is ordinarily a definitional exercise, namely, a determination of whether a proposal fits within the scope of a specific term or terms listed by the legislature in section 20.9. If that threshold test has been met, the next inquiry is whether a proposal is preempted or inconsistent with any provision of law. Ordinarily, this two-step process is the end of the inquiry.

740 N.W.2d 418, 429 (Iowa 2007) (*Waterloo II*). In the definitional exercise of the first prong, PERB identifies the proposal's predominant characteristic, subject, or scope by looking to what the proposal would bind an employer to do if adopted. *See id.* at 427; *AFSCME v. Pub. Emp't Rel. Bd.*, 846 N.W.2d 873, 880 (Iowa 2014). If the proposal's predominant characteristic is within the meaning of a section 20.9 mandatory subject and is not illegal, it is mandatory. *Waterloo II*, 740 N.W.2d at 425. If the proposal is not within a mandatorily negotiable section 20.9 subject, and the proposal is not excluded from the scope of bargaining, it is a permissive subject upon which the parties may agree to negotiate, although neither is required to do so. *Id.* at 422. Under this analysis, section 20.9 topics are to be given their common and ordinary meaning. *Id.* at 429-430.

Negotiability status of the change to attendance policies. The policies that were changed address attendance requirements for approved leave at the various institutions. The pivotal change at issue is the notification requirement that employees must give for an absence to be approved and considered "scheduled." Making a determination whether this type of change falls within the meaning of "leaves of absence" requires an examination of prior PERB case law on the section 20.9 topic, as well as dictionary terms, and the Supreme Court's instruction that section 20.9 topics be given their common and ordinary meaning.

PERB and court decisions have described the leaves of absence topic as including factors such as when an employee may be absent, how often these absences are allowed, whether a leave of absence is with or without pay, conditions on the use of the leave of absence and conditions under which an employee may return to work from a leave of absence. *UE Local 893/Iowa United Prof'ls & State of Iowa*, 2016 ALJ 100053 & 100056 at 7-8. These factors come from proposals that PERB and the courts examined and found mandatorily negotiable.[8] In analyzing the topic "leaves of absence" in *UE Local 893* and companion cases, the ALJ aptly noted dictionary definitions, which both the courts and PERB have consulted in order to determine the meaning of section 20.9 topics, make it clear that a central characteristic of a leave of absence is the element of permission. *See UE Local 893/Iowa United Prof'ls*, 2016 ALJ 100053 & 100056 at 9; *State Police Officers Council & State of Iowa*, 2016 ALJ 100065 at 9-10; and *AFSCME Iowa Council 61 & State of Iowa*, 2016 ALJ 100068 at 9. In one such example, "leave of absence is

---

[8] *See, e.g., Saydel Educ. Ass'n & Saydel Consol. Sch. Dist.*, 1979 PERB 1500 & 1504 (proposal that employer grant specified number of days for union business); *City of Burlington & Local No. 301, Int'l Ass'n of Fire Fighters*, 1980 PERB 1633 (proposal that employer grant specified number of employees time off work for purpose of negotiating collective bargaining agreement); *City of Marion & Marion Police Protective Ass'n*, 1981 PERB 1913 (proposal that no accumulated sick leave be deducted due to on-the-job illness or injury); *Scott Cnty. & AFSCME, Local 606*, 1987 PERB 3418 (proposal that employees receive additional vacation or personal leave of absence if sick leave not used); *Cedar Rapids Ass'n of Firefighters, Local 11*, 1993 PERB 4610, 4712, 4715 & 4729 ("leaves of absence" topic includes not only type of the leave and its duration, but also the conditions under which an employee is permitted to return); *State v. PERB*, 508 N.W.2d 668 (Iowa 1993) (whether a leave of absence for a stated purpose must be granted and, if so, whether it is with or without pay, are within mandatory topic); *Waterloo Cmty. Sch. Dist. & Waterloo Educ. Support Pers.*, 2000 PERB 6014, 6023 & 6017 (proposals for additional personal leave of absence if sick leave not used and for transfer of sick leave among employees mandatory); *City of Fort Madison & Fort Madison Fire Fighters, Local 607,* 2003 PERB 6588 (compensatory leave of absence for employees not using sick leave during specified period). *See also Black Hawk Cnty. & Pub. Prof'l & Maint. Emps.*, 2006 PERB 7219 (proposal that establishes when employees may use sick leave and when it is paid).

defined as permission to be absent from duty or employment. MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY (10th ed. 1994).[9]

What constitutes permission to be absent is at the heart of the notification and approval requirements that were changed by the DHS umbrella attendance policy. Accordingly, the predominant characteristic of the changes is the permission to be absent, which is a mandatorily negotiable matter as a fundamental aspect of "leaves of absence." This determination is consistent with previous case law that the topic "leaves of absence" includes such factors as when an employee may be absent, how often these absences are allowed, whether a leave of absence is with or without pay, conditions on the use of the leave of absence and conditions under which an employee may return to work from a leave of absence. Therefore, the January DHS attendance policy change in notification and approval requirements fits within the scope of the section 20.9 mandatory topic "leaves of absence."

With respect to the second prong of the analysis, neither party argues the policy change is an illegal topic of bargaining.[10] Thus, since the change fits within the scope of the section 20.9 "leaves of absence" mandatory topic, and is not illegal,

---

[9] Other definitions examined include: ROBERT'S DICTIONARY OF INDUSTRIAL RELATIONS (rev. ed. 1971)(leave of absence is a grant to an employee of time off from his job, generally without loss of seniority and with the right to reinstatement); NEW WORLD DICTIONARY (2d college ed. 1974)(meaning of "leave" includes permission to be absent from duty or work, esp. such permission given to personnel in the armed services, as well as the period for which such permission is granted); WEBSTER'S II NEW COLLEGE DICTIONARY (1995)(meaning of the noun "leave" includes official permission to be absent from work or duty, esp. that granted to military personnel, as well as the absence granted by such permission), and WEBSTER'S NEW WORLD DICTIONARY (4th ed. 2003)("leave of absence" defined as permission to be absent from work or duty, esp. for a long time, as well as the period for which this is granted).

[10] Iowa Code section 20.9 now characterizes these subjects as "excluded." Iowa Code § 20.9.

the change was mandatorily negotiable. As a mandatory subject of bargaining not "contained in" the contract, the State was required to provide notice of its intended changes to UE and give UE an opportunity to negotiate the changes if requested.

3. Conclusion. UE met its burden and established the State's commission of prohibited practices as alleged in UE's complaint. The State of Iowa committed prohibited practices within the meaning of Iowa Code sections 20.10(1), 20.10(2)(*a*), (*e*), and (*f*) by its unilateral implementation of a new DHS umbrella attendance policy on January 16, 2015, that changed "leaves of absence" without the State first fulfilling its bargaining obligation with UE.

C. Remedy. In its brief, UE requests an order directing the State to cease and desist from further violations, and to make employees whole for any losses suffered as a result of the policies. In fashioning an appropriate remedy, one factor I considered is the change to Iowa Code section 20.9 topics including the change to "leaves of absence" to a permissive subject of bargaining for non-public-safety units like the one in this case. With a section 20.9 permissive subject, the employer is not required to negotiate a change not "contained in" the parties' collective bargaining agreement. The chapter 20 changes were effective February 17, 2017. However, even in shortening the time period to reflect the change to "leaves of absence," I am unable to determine a make whole remedy for employees. The record, consisting of the parties' stipulated facts and exhibits, does not reveal adverse effect to any employees although the hearing notice identified "evidence concerning the precise nature and scope of an appropriate remedy" as one purpose of the proceeding—rather than requiring a bifurcated hearing.

Consequently, the ALJ proposes entry of the following:

ORDER

The State (Department of Human Services) is ordered to cease and desist from further violations of the Act, and shall, immediately post the attached Notice to Employees in places customarily used for the posting of notices to employees for a period of not less than thirty (30) calendar days.

DATED at Des Moines, Iowa this 17th day of September, 2019.

Diana S. Machir
Administrative Law Judge

Original filed EDMS.

NOTICE TO EMPLOYEES

OF
STATE OF IOWA
(DEPARTMENT OF HUMAN SERVICES)

POSTED PURSUANT TO A DECISION OF THE PUBLIC EMPLOYMENT RELATIONS BOARD

The Iowa Public Employment Relations Board (PERB) has determined that the State of Iowa (Department of Human Services), a public employer, committed prohibited practices within the meaning of Iowa Code sections 20.10(1), and 20.10(2)(*a*), (*e*), and (*f*).

The violations occurred in January, 2015, when the State/Department of Human Services (DHS) unilaterally implemented a DHS umbrella attendance policy without first fulfilling its bargaining obligation of providing notice to UE Local 893/Iowa United Professionals and opportunity for UE to bargain the intended changes. The DHS attendance policy made changes to a mandatorily negotiable matter "leaves of absence." PERB has concluded that these actions by the employer constituted a failure to bargain in good faith; a refusal to bargain; and interfered with, restrained or coerced the employees' exercise of their right to negotiate collectively with the State through their certified representative UE Local 893/Iowa United Professionals; and denied UE rights, which accompanied its certification.

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

20.10 Prohibited practices.

1. It shall be a prohibited practice for any public employer, public employee or employee organization to willfully refuse to negotiate in good faith with respect to the scope of negotiations as defined in section 20.9.
2. It shall be a prohibited practice for a public employer or the employer's designated representative willfully to:

a. Interfere with, restrain or coerce public employees in the exercise of rights granted by this chapter.

e. Refuse to negotiate collectively with representatives of certified employee organizations as required in this chapter.

f. Deny the rights accompanying certification granted in this chapter.

To remedy the violation, the State (Department of Human Service) has been ordered 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 DHS employees.

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

Issued: September 17, 2019