

collective bargaining agreement in early 2015, their existing agreement provided that the City would pay for certain retiree health insurance benefits. On July 22, 2015, the City filed a petition (subsequently amended) for our resolution of negotiability disputes which had developed between the parties during their negotiations (PERB Case No. 100058). The two proposals at issue in that case both would have required the City to reimburse retirees for certain health insurance expenses, and differed only in that one would have applied to all retirees, while the other was limited to retirees who had been hired on or before July 1, 2015.

On August 5, 2015, we issued our ruling on the negotiability dispute, concluding that both proposals at issue were legally excluded (illegal) subjects of bargaining based upon the Iowa Supreme Court's decision in *City of Mason City v. PERB*, 316 N.W.2d 851 (Iowa 1982)(holding that a proposal requiring a city to pay health insurance premiums for retired employees directly augmented or supplemented the benefits a public employee would receive under a retirement system and was therefore excluded from the scope of negotiations by Iowa Code section 20.9).

Following the issuance of our ruling, the parties agreed upon and executed a successor contract effective through June 30, 2017. In view of our ruling in Case No. 100058, this successor agreement did not provide for retiree health insurance. Instead, the parties agreed upon and executed what they refer to as a "side letter" to the collective agreement, which provides:

Side Letter

This Side Letter shall not be effective until the City receives a ruling from the Iowa Public Employee [sic] Relations Board on a negotiability petition that this Side Letter is not an illegal subject of bargaining.

The City will cause to be presented to one member of the Iowa House of Representatives and one member of the Iowa Senate a proposed bill for a legalizing act for the 2015-2016 legislative session concerning the following, and upon legalization the following shall be included in the parties' collective bargaining agreement:

No health insurance benefits will be provided to retirees who were hired by the City after July 1, 2015. Retirees hired prior to July 1, 2015 will pay the deductibles, coinsurance, co-pays and the health insurance premium contributions at the rates in effect as of the official date of their retirement. Eligible retirees must be current on their deductibles, coinsurance, co-pay and insurance premium contributions to remain eligible for City reimbursement at the rate in effect as of the official date of their retirement.

The parties' joint petition poses the question of "whether the side letter is an illegal subject of bargaining." We note that the third paragraph of the letter is nearly identical to one of the proposals we ruled illegal in Case No. 100058.

II. Discussion.

Although raised in the context of a declaratory order proceeding, the question presented in this case is much like those which typically come before us in proceedings for the expedited resolution of disputes concerning the section 20.9 negotiability status of proposals made during collective bargaining. See PERB rule 621—6.3.

Subjects of bargaining are divided into three categories—mandatory subjects listed in section 20.9 on which bargaining is required if requested, permissive subjects on which bargaining is permitted but not required (“other matters mutually agreed upon”) and the so-called illegal or prohibited subjects which are excluded by law from negotiations or which, if included in a collective bargaining agreement, would require or allow the violation of some other provision of law. *See, e.g., Charles City Cmty. School Dist. v. PERB*, 275 N.W.2d 766, 769 (Iowa 1979).

When determining the mandatory/permissive/illegal status of proposed contract language, we apply the two-pronged approach explained in *Waterloo Educ. Ass’n v. PERB*, 740 N.W.2d 418 (Iowa 2007). The first prong is a definitional exercise to determine whether the proposal fits within the scope of a specific term listed in Iowa Code section 20.9. *Id.* at 429. The second prong addresses whether the proposal is preempted or inconsistent with any provision of law. *Id.* Since the petition here asks only whether the side letter is an illegal subject of bargaining, we can resolve the question by way of the second prong alone.

In their petition the parties assert that their agreement is not an illegal subject of bargaining because it requires both a PERB ruling and a legalizing act prior to the implementation of retiree health insurance. According to the parties, the action to be taken under the side letter is not the granting of health insurance to retirees, but is instead the pursuit of legislation that will “legally

permit the City [] to offer insurance to retirees who were employees hired before July 1, 2015....”²

We cannot agree with either the parties’ characterization of what the side letter would require the City to do or with their assertion that the letter is not a prohibited (illegal) topic of bargaining. The side letter requires the City to do more than merely pursue legislation. While it does require the City to present legislators with a bill for some sort of “legalizing act” (the specifics of which are absent from the letter), it also requires the City to incorporate the letter’s third paragraph as part of the parties’ collective bargaining agreement, *i.e.*, to actually provide the benefit, “upon legalization.”

We are aware of no provision of law, including section 20.9, which would preclude a public employer and a certified employee organization from negotiating over a proposal that one or both of them seek specific legislative action. Here, however, the letter’s inclusion of the provision effectively requiring the City to provide a specified retiree health insurance benefit “upon legalization”

² This characterization of the contemplated legislation, as well as the petition’s recitations that the parties wish “to legally allow retirees who were hired as employees prior to July 1, 2015 to stay on the City’s health insurance plan. . .” and that their side letter was agreed upon “in furtherance of obtaining a legal means to provide health insurance to individuals currently employed by the [City] when they retire. . .” lead us to suspect that the parties may be reading Iowa Code section 20.9 and our ruling in Case No. 100058 too broadly—to the effect that they somehow preclude the City from legally providing a retiree insurance benefit. But in fact, neither section 20.9 nor our ruling in Case No. 100058 prohibits the City from providing such a benefit.

Section 20.9 contains no such prohibition, merely providing that “[a]ll retirement systems shall be excluded from the scope of negotiations,” *i.e.*, that parties shall not negotiate retirement systems. Similarly, our ruling in Case No. 100058 in no way held that it was illegal for the City to provide retiree health insurance benefits should it choose to do so. We simply ruled that two bargaining proposals which would have required the employer to provide the benefit were legally excluded from the scope of negotiations, *i.e.*, that the parties could not negotiate the matter, since it was within the meaning of “retirement systems” as defined by our Supreme Court.

renders the side letter inconsistent with section 20.9. It is thus a matter legally excluded from collective bargaining.

Iowa Code section 20.9 unambiguously provides that “retirement systems” (previously held to include retiree health insurance) “shall be excluded from the scope of negotiations.” We think this provision of the statute, as interpreted by our Supreme Court, evinces a clear legislative intent that retiree health insurance benefits not be negotiated by public employers and certified employee organizations. Yet, from the face of their side letter, it is obvious that the parties have done exactly that, placing the cart in front of the horse by negotiating on an prohibited topic in advance, prior to obtaining legal authority to do so. The letter’s final paragraph, which specifies terms upon which the retiree health insurance benefit will be provided, could not have become part of the parties’ side-letter agreement absent some form of negotiation between them, even if those negotiations were nothing more than an offer by one party and an immediate acceptance by the other. That the parties have also negotiated contingencies which must be accomplished before this negotiated benefit is actually implemented does not alter this fact or somehow validate their negotiations on an prohibited topic of bargaining.³

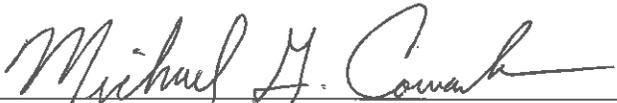
³ We would likely reach a different conclusion if the side letter merely provided for the presentation of a bill authorizing these parties to negotiate a retiree health insurance benefit and, upon that bill becoming law, for the parties to then negotiate over what would (for them) no longer be an excluded topic of bargaining. Under those circumstances, the cart would remain squarely behind the horse, and no negotiation of the excluded topic would take place until such negotiations had been authorized by law.

III. Conclusion.

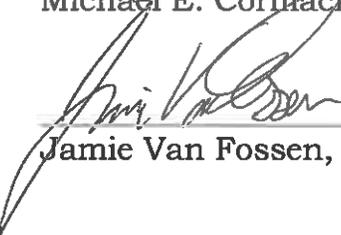
In response to the question posed by the joint petition, we conclude that the parties' side letter is inconsistent with Iowa Code section 20.9 and is thus a legally excluded (illegal/prohibited) subject of bargaining.

DATED at Des Moines, Iowa, this 6th day of January, 2016.

PUBLIC EMPLOYMENT RELATIONS BOARD



Michael E. Cormack, Chair



Jamie Van Fossen, Board Member

Board Member Mary T. Gannon,
appointed effective January 4, 2016, takes no part.