

STATE OF IOWA  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

---

CEDAR RAPIDS POLICE BARGAINING	)	
UNION,	)	
Complainant,	)	
	)	
and	)	CASE NOS. 102144 & 102145
	)	
CITY OF CEDAR RAPIDS,	)	
Respondent.	)	

---

PROPOSED DECISION AND ORDER

On January 18, 2018, Cedar Rapids Police Bargaining Union (Union) filed two complaints with the Public Employment Relations Board (PERB or Board) pursuant to Iowa Code section 20.11 and PERB rules 621—3.1(20). The complaint in case number 102144 alleges the City of Cedar Rapids committed a prohibited practice within the meaning of Iowa Code sections 20.10(1) and 20.10(2)(a), (e), and (g) when it changed the shift schedule from an 8-hour to a 10-hour schedule. The complaint in case number 102145 alleges the City committed a prohibited practice within the meaning of Iowa Code section 20.10(1) and 20.10(2)(a), (e), and (g) when a bid posting failed to identify the shift commander that would be in charge of each shift/platoon up for bid, which was a change from past practice.

The City denies commission of a prohibited practice. The City further asserts that the complaints fail to state a claim upon which relief may be granted because the Union's claims are essentially alleged violations of the parties' collective bargaining agreement, and the exclusive process for resolving such claims is through the parties' agreement.

The Board consolidated these two cases on June 19, 2018. A hearing was held on July 17, 2018, and post-hearing briefs were received on or before September 11, 2018. The parties were represented by attorneys Aaron Hilligas for the City and Joseph Day for the Union.

#### FINDINGS OF FACT

The City of Cedar Rapids is a public employer within the meaning of Iowa Code section 20.3(10) and the Cedar Rapids Police Bargaining Union is a certified employee organization within the meaning of Iowa Code section 20.3(4).

In 1975, Chauffeurs, Teamsters and Helpers, Local Union No. 238 was certified by PERB to be the exclusive bargaining representative for police department employees and certain public safety department employees. PERB decertified Local 238 as the exclusive bargaining representative for this bargaining unit in 2013. On March 13, 2013, PERB certified the Cedar Rapids Police Bargaining Union as the exclusive bargaining representative for police department employees and certain public safety department employees. This unit was subsequently amended in March, 2014, and provides:

INCLUDED: All employees of the Cedar Rapids Police Department including police officers and all clerical personnel attached to the Police Department, including Police Record Technicians, Police Property Technician and Background Check Technicians.

EXCLUDED: All other City employees, the Chief of Police, Assistant Chiefs, Captains, Lieutenants, Sergeants, Detectives and all other persons excluded by Iowa Code section 20.4.

At the time the complaints were filed, the City and the Union were parties to a collective bargaining agreement effective July 1, 2016 through June 30, 2019. Relevant portions of that agreement provide as follows:

*Article 2 – Recognition*

\*\*\*\*

2.3 The Employer has, in addition to all powers, duties and rights established by constitutional provision, statute, ordinance, charters, or special act, the exclusive power, duty and right to direct the work of its public employees; hire, promote, demote, transfer, assign and retain public employees in positions within the employer's operation....

\*\*\*\*

*Article 9 – Grievance Procedure*

\*\*\*\*

9.1 It is mutually agreed that all grievances, disputes or complaints arising under and during the term of this Agreement shall be settled in accordance with the procedure herein provided. Every effort shall be made to adjust controversies and disagreements in an amicable manner between the Employer and the Union. All grievances must be filed within 7 days of alleged infraction.

\*\*\*\*

*Article 10 – Seniority*

\*\*\*\*

10.2 c) Total Police Department Seniority shall be used for the purpose of bid jobs or layoff, or shifts/platoons to be worked. Classification Seniority shall be used only for selection of days off, selection of holidays to be off or selection of vacation dates when openings are available, within the respective shifts or platoons, sworn/non-sworn (*civilian*).

\*\*\*\*

*Article 11 – Workweek and Overtime*

\*\*\*\*

11.2 The normal scheduled workweek shall consist of four 10-hour days or five 8-hour days. No split shifts except under unusual conditions. Employees will have a regular starting and quitting time except special assignment personnel will work a flexible schedule.

11.3 a) The Chief will designate the number of officers required for each platoon and employees will bid by seniority. Positions will be re-bid annually in December and when a realignment of the workforce is needed. The Chief will decide when a re-alignment is required. Upon completion of their probationary period, rookies will be assigned to a platoon until the next official bid. Likewise, employees leaving special assignments will also be assigned to a platoon until the next official bid period.

The work hours will periodically be assessed by police management. The Union will be given 60-days notice and an opportunity to meet and confer before a change is made.

\*\*\*\*

In 2017, the City retained a consultant to conduct a comprehensive study into staffing and operations of the police department. Upon completion of the report, Police Chief Wayne Jerman made a series of presentations on September 19, 2017, to bargaining unit employees regarding the results of the study. The study was also placed on Police Shares for review by departmental employees. The study revealed that the efficiency level of the current five 8-hour day schedule was 59.86% and that two alternative schedules: Pittman Hybrid 12-10-8 (Pittman Hybrid) and Modified 4/10 hour days (Modified 4/10 schedule), could significantly increase the department's efficiency.

Pursuant to section 11.2 of the parties' collective bargaining agreement, the normal scheduled work week consisted of "four 10-hour days or five 8-hour days." The City believed that because the Pittman Hybrid Model schedule was a 12-hour schedule, its adoption would require an affirmative vote of the Union's membership due to the agreement's language limiting the scheduled work week to 8 and 10-hours per day. The City also believed that moving to the Modified

4/10 schedule would not require approval since the agreement already specified a four 10-hour day schedule.

On November 1, 2017, a meeting was held between the police department and Union representatives, and was attended on behalf of the City by Chief Jerman, Deputy Chief Jonker, Captain Hembera, Captain Long and HR representative Halverson. The Union was represented by Officer Merriweather, union president, and Office Carter, and Officer White, both union stewards. At the meeting, Captain Hembera gave a PowerPoint presentation with regards to the two shift schedule options: Pittman Hybrid schedule and the Modified 4/10 schedule. The presentation included a chart which highlighted the differences.

	Pittman	4 10 hr	Current
Increased Efficiency	76.07	78.37	59.86
CWS	Y	Y	Y
Max # weekend off	104	83	85
Varied Experience of Shift	Y/N	Y	N
Reduced Car needs	46	37	55
Maintain xing hours	Y	Y	

The “current” schedule was a five 8-hour day schedule and was platoon-based so that officers within a platoon worked the exact same hours and had the exact same days off. With the Modified 4/10 schedule, although officers worked the same hours, days off for platoon members were staggered and would vary depending upon seniority.

At the meeting, union representatives posed questions to management. One union representative asked what would happen if the two proposed schedules were voted down by the membership. There is disagreement as to the Chief's answer. The Union testified that the Chief told them if the schedules were voted down, then the schedule would remain status quo, but that he did not want to hear any complaints. The Chief and Captain Hembera testified that due to the current schedule's inefficiencies, the Chief would not have said the status quo would be maintained.

The Union met with their membership, and from these meetings, submitted eight questions to the City for its response. Question 6 related to the Union's upcoming vote on the proposed schedules. Captain Hembera provided answers on November 14, 2018. Question 6 and its corresponding answer were:

What are the Chief's intentions if both schedules are rejected? The Chief intends to move forward with a schedule that is in the best interests of the department, officers, and the community while complying with the Collective Bargaining Agreement.

On November 30, 2017, the Union sent the City the results of the vote regarding the alternative schedules; "101 against the proposed schedules and 37 for the proposed schedules." Later that day, Chief Jerman provided officer Merriweather with a 60-day notice of a shift change to the Modified 4/10 schedule and an offer to meet and confer with regards to the planned change pursuant to the parties' collective bargaining agreement. The notice provided:

In accordance with Article 11.3.a. of the collective bargaining agreement, I am providing the Union with the required 60-day notice of a shift change. The shifts will be in effect on or about March 1,

2018, and will be the Modified 4/10 schedule, as has been provided to the Union on November 1, 2017.

As stated in Article 11.3.a. the Union has the ability to meet and confer before the shift change becomes effective. If you would like to discuss the logistics for this shift change, please let me know and we will schedule a time to discuss the matter.

The bidding of the Modified 4/10 schedule can begin once the schedule has been provided to the Union. I will direct Captain Hembera to provide the Union with the schedule, to include all open slots for the various shifts.

The Union claims the schedule the City adopted was different from the schedule presented and voted upon because there were two fewer weekend slots per shift.

Pursuant to section 11.3(a), after the police chief designates the number of officers needed for each platoon, employees bid on the shifts by seniority. For many years, the practice had been not only to include the shifts' days and hours on the bid sheet, but also the name of the shift commander in charge of each shift/platoon for the coming year. Although there was always a possibility the shift commander would change, this information was used by some officers to determine their shift selection. However, in November, 2017, when the shift/platoon schedules were posted for bid, shift commanders were not identified, which was contrary to past practice. When asked, the City told the Union that the shift commander's assignments had not been determined.

On January 3, 2018, Officers Merriweather and Lahr met with the Chief. Officer Merriweather testified to the following regarding this meeting:



A. That was the meeting where we discussed numerous topics from changing numbers on the actual bids, the not having commanders on the bid – the shift bids, the problem with coverage on the weekends at shift change at 7:00 and then a couple of nonscheduled-related issues.

Q. So you did discuss with the chief the new schedule he proposed after the vote by the union rejecting the two that were offered?

A. Yes.

Q. Okay, fine.<sup>1</sup>

The Union filed two prohibited practice complaints against the City on January 18, 2018. Pursuant to the Chief's notification of November 30, the shift schedule was changed to the Modified 4/10 schedule on February 16, 2018.

#### CONCLUSIONS OF LAW

The City argues that PERB should dismiss the instant complaints because a majority of the Union's case and a substantial portion of the evidence at the hearing related to the contract language and past practices of the City in the administration of these provisions.

It is well established that PERB is not a forum for the resolution of disputes concerning the proper application or interpretation of a collective bargaining agreement. *Harvey L. Kunzman, Jr. & Mason City Cmty. Sch. Dist. & Teamsters Local Union #828*, 03 HO 6412, 6413 at 12. Additionally, contract violations are not remedied through a prohibited practice complaint, but instead through a contractual grievance procedure if one exists, or through the courts if no grievance procedure exists or if a party seeks to enforce the grievance procedure

---

<sup>1</sup> Transcript at 99.



pursuant to Iowa Code section 20.17(5). *AFSCME Iowa Council 61 & State of Iowa*, 16 ALJ 100068 at 4 (footnote 2); *AFSCME/Iowa Council 61, Local 3289-6 & State of Iowa (6<sup>th</sup> Judicial Dist. Dep't of Corr. Serv., 05 HO 6824 at 7; AFSCME/Iowa Council 61 & State of Iowa (Iowa Dep't of Corrections)*, 89 PERB 3499 at 11.

There is no question that Article 10, section 10.2(c), and Article 11, sections 11.2 and 11.3(a) of the parties' collective bargaining agreement are at the heart of this dispute. Whether the City violated Article 11 of the parties' collective bargaining agreement (1) when it changed to the Modified 4/10 schedule, and (2) when it did not continue the past practice of identifying shift commanders prior to shift bidding are issues to be decided by a grievance arbitrator, not PERB.

Although a party's violation of a collective bargaining agreement is not a prohibited practice under section 20.10, actions by a public employer when it unilaterally changes provisions "contained in" the collective bargaining agreement without the consent of the union may constitute a prohibited practice. *Harvey L. Kunzman, Jr.*, 03 HO 6412 & 6413 at 12; *John K. Lomen & State of Iowa (Dep't of Pers.)*, 99 HO 5965 at 4.

The Union alleges that the City committed prohibited practices within the meaning of Iowa Code sections 20.10(1) and 20.10(2)(a), (e) and (g) when (1) it changed the shift during the term of the collective bargaining agreement without the consent or mutual agreement of the Union and (2) unilaterally omitted the shift commander's identification previously provided to the officers when bidding

on shift assignments. The provisions of section 20.10 relevant to these claims 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 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.

g. Refuse to participate in good faith in any agreed upon impasse procedures or those set forth in this chapter.

In prohibited practice proceedings, the complainant bears the burden of establishing each element of the charge. *UE Local 893/Iowa United Prof'l & State of Iowa (Dep't of Human Serv.)*, 19 ALJ 10024 at 8; *AFSCME Iowa Council 61 & City of Clinton, Iowa*, 18 PERB 100702 at 15-16; *Int'l Ass'n of Prof'l Firefighters, Local 2607 & Cedar Rapids Airport Comm'n*, 13 PERB 8637 at 10; *AFSCME/Iowa Council 61 & Louisa Cty.*, 11 PERB 8146 at 9.

PERB case law regarding unilateral change cases is well established. An employer's unilateral change in a mandatory topic of bargaining without providing the certified employee organization prior notice and opportunity to bargain constitutes a prohibited practice within the meaning of Iowa Code sections 20.10(1) and 20.10(2)(a),(e), and (f). *AFSCME Iowa Council 61*, 18 PERB 100702 at 14; *AFSCME Iowa Council 61*, 16 ALJ 100068 at 4-5; *Des Moines Ass'n*

*of Prof'l Firefighters, Local 4 & City of Des Moines*, 14 PERB 8535 (ALJ decision at 16).<sup>2</sup>

In order to prevail in an unlawful unilateral change case, a complainant must show: (1) that the employer implemented a change; (2) the change was to a mandatorily negotiable matter; and (3) the employer did not fulfill its bargaining obligations before making the change. *UE Local 893/Iowa United Prof'l*, 19 ALJ 10024 at 8; *AFSCME Iowa Council 61 & City of Clinton, Iowa*, 18 PERB 100702 at 15; *AFSCME Iowa Council 61*, 16 ALJ 100068 at 5; *Des Moines Ass'n of Prof'l Firefighters, Local 4*, 14 PERB 8535 (ALJ decision at 16-17). Because the Union bears the burden of establishing each element of the charge, I will address each of these elements in turn for the two complaints.

*Change of Shift Schedule: (PERB Case No. 102144)*

The Union argues that the City imposed a new shift schedule which was different from the current schedule and in so doing did not provide the Union with notice and opportunity to bargain the change in the schedule before it was unilaterally changed to the Modified 4/10 schedule.

The first element in the analysis of a unilateral change case is to identify the alleged change at issue and when it was implemented. The current schedule was a five 8-hour day platoon-based schedule which meant that officers worked the exact same hours with the exact same days off. With the Modified 4/10 schedule, officers worked four 10-hour days, instead of five 8-hour days. Instead

---

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

of having the same days off, they would vary depending upon seniority. Additionally, the maximum number of weekends off decreased with the Modified 4/10 schedule. The Union also claims the Modified 4/10 schedule, as adopted, was different from what had been presented at the meetings and voted upon because there were two fewer weekend slots per shift. With or without the additional weekend slots, there is sufficient evidence to conclude that the City implemented a change on February 16, 2018, when the department went to the Modified 4/10 schedule.

The second element in the analysis requires a determination of whether the alleged change was made to a section 20.9 mandatory topic of bargaining within Iowa Code section 20.9. One of the mandatory topics of bargaining included within section 20.9 is “hours.” PERB has previously held that the mandatory topic of “hours” encompasses “both total hours as well as starting and quitting times.” *City of Newton & Newton Police Union, Local 76*, 79 PERB 1322 at 2. As a result, I conclude that the Modified 4/10 schedule directly addressed hours, a mandatory topic of bargaining.

The last element in analyzing a unilateral change case requires a review of the collective bargaining agreement because the nature of the employer’s bargaining obligation differs depending upon whether the mandatorily negotiable term is “contained in” the collective bargaining agreement or not “contained in” the agreement. *UE Local 893/Iowa United Prof’l*, 19 ALJ 10024 at 8; *AFSCME Iowa Council 61*, 18 PERB 100702 at 15; *Des Moines Ass’n of Prof’l Firefighters, Local 4*, 14 PERB 8535 (ALJ decision at 16).

If the subject is a mandatory topic of bargaining and “contained in” the parties’ collective bargaining agreement, the employer must obtain the certified employee organization’s consent prior to implementing the change. If the subject is a mandatory topic of bargaining not “contained in” the parties’ collective bargaining agreement, PERB has consistently held that the employer may lawfully make changes to the subject during the contract term if it has given the Union notice of the change. *UE Local 893/Iowa United Prof’l*, 19 ALJ 10024 at 8; *AFSCME Iowa Council 61*, 18 PERB 100702 at 15; *Des Moines Ass’n of Prof’l Firefighters, Local 4*, 14 PERB 8535 (ALJ decision at 16); *AFSCME/Iowa Council 61*, 2011 PERB 8146 at 14. The Union then may either request or waive bargaining. If the Union chooses to bargain, the employer has an obligation to bargain the matter in good faith to the point of impasse before making any changes to the collective bargaining agreement. *AFSCME/Iowa Council 61*, 2011 PERB 8146 at 14.

Neither party specifically argued that the change from the five 8-hour shift schedule to the Modified 4/10 schedule was “contained in” or not “contained in” the parties’ collective bargaining agreement. In its brief, the Union argued “that the City did not give any notice of negotiation with respect to the change in the structure of the shifts for which bargaining unit members exercised [their] seniority by virtue of selection.” The Union has the burden of proof and in its’ brief addressed the bargaining duty which is required before an employer can make a unilateral change to a mandatory subject not “contained in” the agreement. Therefore I assume, without deciding, that the change by the City

was to a mandatory topic of bargaining not “contained in” the collective bargaining agreement. *See: UE Local 893/Iowa United Prof’l*, 19 ALJ 100024 at 9, footnote 6 (ALJ assumes that the alleged change was to a mandatorily negotiable matter not “contained in” the collective bargaining agreement because the union asserts in its brief that “the State has a statutory obligation to meet and bargain in good faith prior to implementing any change” which is the bargaining duty required for matters not “contained in” the agreement.)

As previously discussed, while it is not PERB’s role to enforce or interpret the parties’ collective bargaining agreement, PERB does have the authority to interpret a contract in order to determine if there has been a violation of Iowa Code section 20.10. *AFSCME Iowa Council 61*, 16 ALJ 100068 at 4 (footnote 2); *AFSCME/Iowa Council 61, Local 3289-6*, 05 HO 6824 at 7; *Harvey L. Kunzman, Jr.*, 03 HO 6412, 6413 at 12.

The relevant sections of the collective bargaining agreement are sections 11.2 and 11.3(a). Section 11.2 states that the normal scheduled work week is either four 10-hour days or five 8-hour days. Section 11.3(a) gives the City a great deal of flexibility and provides that the police chief will periodically assess work hours and before changes are implemented, the City is to give the union 60-days notice and an opportunity to meet and confer before the change is implemented. Based upon my reading of section 11.3(a), there is no language restricting schedule changes. The only limitation is the requirement that the schedule change take place after 60 days in order to allow the Union opportunity to “meet and confer” with the City.

In the instant case, the City met with the Union representatives regarding the two shift options and answered the Union's emailed questions. Although there was conflicting testimony as to the ramifications if the officers voted down the schedule, the email issued after the meeting contained the Chief's answer,<sup>3</sup> which should have put the Union on notice that the current shift schedule was in jeopardy of changing. After the Union notified the Chief that its members had rejected both options, the Chief followed the collective bargaining agreement and sent a memo to the Union notifying them that the employer was changing the schedule and was willing to meet with the Union about the change to the Modified 4/10 schedule. This memo also specified the City's timeframe as to when the change was going to take place; on or about March 1, 2018. I find that the memo provided adequate notice to the Union of the City's intended change in a mandatory topic of bargaining.

The Union further argues that the change to the Modified 4/10 schedule violated chapter 20 since the Chief's notice was to "meet and confer" which is different from "meet and negotiate." It is clear that a meeting took place on January 3rd with the Chief, Officers Merriweather and Officer Lahr. However, the substance of those discussions is not clear with regards to the Modified 4/10 schedule. Even assuming that the Union had a right to meet and negotiate, due to the lack of specificity with regards to this meeting, I cannot conclude that the

---

<sup>3</sup> "The chief intends to move forward with a schedule that is in the best interests of the department, officers and community while complying with the collective bargaining agreement."



January 3rd meeting constituted the Union asserting its right to bargain which obligated the City to bargain the Modified 4/10 schedule to impasse.

Based upon the evidence presented, I conclude that the City's implementation of the Modified 4/10 schedule after the requisite 60-day notice did not amount to an unlawful unilateral change to a mandatory topic of bargaining not "contained in" the collective bargaining agreement. As a result, I find that the Union has failed to establish that the City engaged in prohibited practices within the meaning of Iowa Code sections 20.10(1), 20.10(2)(a), and (e) when it modified the shift schedule.

Identification of the Shift Commander. (PERB Case no. 102145)

The Union alleges that when the City unilaterally ended the past practice of identifying shift commanders prior to the officers bidding on shifts, this changed the manner in which seniority was exercised, and as a result, the City should have negotiated the change in shift bidding. The Union contends that the City deliberately concealed the shift commander's identification. However, there is no evidence in the record that the City had determined the shift commander assignments prior to posting the shift bids.

As previously discussed, in order to prevail in an unlawful unilateral change case, a complainant must show: (1) that the employer implemented a change; (2) the change was to a mandatorily negotiable matter; and (3) the employer did not fulfill its bargaining obligations before making the change. *UE Local 893/Iowa United Prof'l*, 19 ALJ 10024 at 8; *AFSCME Iowa Council 61 & City of Clinton, Iowa*, 18 PERB 100702 at 15; *AFSCME Iowa Council 61*, 16 ALJ

100068 at 5; *Des Moines Ass'n of Prof'l Firefighters, Local 4*, 14 PERB 8535 (ALJ decision at 16-17). Once again, the complainant bears the burden of establishing each element of the charge.

The first element in the analysis of a unilateral change case is to identify the alleged change at issue and when it was implemented. It is uncontested that the shift commanders had been previously identified prior to shift bidding and that a change occurred when the shift commanders were not identified prior to the posting of the shift bids in November, 2017.

The second element in the analysis requires a determination of whether the alleged change was made to a section 20.9 mandatory topic of bargaining. In order to make that determination, "one looks to what the proposal would bind the employer to do." *AFSCME Iowa Council 61*, 16 ALJ 100068 at 6. If the predominant characteristic is within the meaning of a section 20.9 mandatory topic, and is not excluded, it is mandatory. If the predominant characteristic is not within the meaning of a section 20.9 mandatory topic, and the proposal is not excluded, it is permissive. *Id.* at 7.

The change at issue would require the City to identify the shift commanders prior to the posting of bids. The Union maintains that the Chief's failure to identify the shift supervisor directly affected the manner in which seniority was exercised. However, seniority as defined in section 20.9 refers to matters concerning the calculation of seniority, eligibility for accrual of seniority, and record-keeping concerning employee seniority. *Scott Cty., Iowa and Scott Cty. Corrections and Commc'n Ass'n/Teamsters Local No. 238*, 12 PERB 8541 at

7; *Amalgamated Transit Union Div. 329 & City of Dubuque*, 04 PERB 6828 at 5.

In *Scott County*, the Board held that the semi-annual shift bidding procedures did not fall under the “umbrella of ‘seniority.’” The Board in applying the definition of seniority to the provision at issue stated:

The provision does not refer to the calculation, accrual, or record-keeping of employee seniority. Rather it relates to the application of “seniority” to the order of employees bidding on shifts. Subsection 2.9(A) is not, therefore, mandatorily negotiable under the section 20.9 subject of seniority.<sup>4</sup>

Therefore, because shift bidding by seniority is a non-mandatory (permissive) topic of bargaining, it follows that the identification of shift commanders, an element in the shift bidding procedure, is also a permissive topic of bargaining.

PERB has previously held that a unilateral change in a permissive subject of bargaining “contained in” a collective bargaining agreement is not a prohibited practice within the meaning of section 20.10. *Des Moines Ass’n of Prof’l Firefighters, Local 4*, 14 PERB 8535 (ALJ decision at 18); *Black Hawk Cty. & Public Prof’l & Maintenance Employees, Local 2003*, 08 PERB 7929 at 9; *AFSCME/Iowa Council 61*, 89 PERB 3499 at 11. Additionally, as previously discussed, the appropriate avenue for remedying a contract violation is through grievance arbitration pursuant to the contract and/or judicial enforcement procedures pursuant to Iowa Code section 20.17(5). *AFSCME/Iowa Council 61*, 89 PERB 3499 at 11.

---

<sup>4</sup> *Scott Cty., Iowa*, 12 PERB 8541 at 7.

Accordingly, I cannot conclude the City committed a prohibited practice since the requirement that the City identify the shift commander prior to the bid process is a permissive subject of bargaining. Although the employer has clearly deviated from its past practice of identifying shift commanders, this deviation from past practice is a unilateral change in a permissive subject of bargaining “contained in” the collective bargaining agreement. A unilateral change in a permissive subject of bargaining “contained in” the collective bargaining agreement fails to state a claim upon which relief may be granted. *Black Hawk Cty. & Public Prof'l & Maintenance Employees, Local 2003*, 08 PERB 7929 at 9-10.

For the foregoing reasons, I conclude that the identification of shift commander is not a mandatory topic of bargaining under the Iowa Code section 2.9 category of seniority. Accordingly, the City did not violate section 20.10(1) and 20.10(2)(a) and (e) when it did not identify the shift commanders prior to the officers bidding the shifts.

Because the Union has failed to prove the second element; that the change was made to a mandatorily negotiable matter, I need not address the third element; whether the employer fulfilled its bargaining obligation before making the change.

Section 20.10(2)(g):

In both complaints, the Union argues that the City violated section 20.10(2)(g). This section provides that it is a prohibited practice for an employer to “refuse to participate in good faith in any agreed upon impasse procedures or

those set forth in this chapter.” This language refers to the procedures for the resolution of bargaining impasses as contemplated by Iowa Code sections 20.19-20.22, not the parties’ grievance procedure. *Harvey L. Kunzman*, 03 H0 6412 at 11. Accordingly, the Union has failed to establish the City’s commission of a prohibited practice complaint within the meaning of Iowa Code section 20.10(2)(g).

Based on all of the above, I consequently propose entry of the following:

ORDER

The prohibited practice complaints filed by the Cedar Rapids Police Bargaining Union, in PERB case numbers 102144 and 102145 are DISMISSED.

The costs of reporting and of the agency-requested transcript in the amount of \$842.70 are assessed against the Union pursuant to PERB rule 621—3.12. A bill of costs will be issued in accordance with PERB subrule 621—3.12(3).

The proposed decision will become PERB’s final decision in accordance with PERB rule 621—9.1 unless, within 20 days of the date below, a party aggrieved by the proposed decision files an appeal to the Board or the Board, on its own motion, determines to review the proposed decision.

DATED at Des Moines, Iowa, this 2nd day of April, 2020.



Susan M. Bolte  
Administrative Law Judge

Original eFiled  
Parties served via eFlex