

Iowa Department of Inspections and Appeals
Administrative Hearings Division
Wallace State Office Building, Third Floor
Des Moines, Iowa 50319

IN THE MATTER OF:)	
)	
CORALVILLE POLICE OFFICERS)	PERB Case No. 102763
ASSOCIATION,)	DIA NO. 23PERB0049
Petitioner/Certified Employee)	
Organization,)	
)	
and)	
)	
CITY OF CORALVILLE,)	
Respondent/Public Employer.)	

PRELIMINARY RULING ON NEGOTIABILITY

On December 15, 2022, the Coralville Police Officers Association (CPOA) filed a petition for the expedited resolution of a negotiability dispute, which arose in the course of the parties' negotiations. This matter was transmitted to the Administrative Hearings Division of the Iowa Department of Inspections and Appeals to issue a preliminary ruling on negotiability. The petition seeks a ruling on the section 20.9 negotiability status of proposals made by CPOA concerning including civil service procedures pursuant to Iowa Code §400.18(5).

The parties' dispute is presented in the form of provisions of their 2022 - 2023 collective bargaining agreement. Oral arguments on the petition were presented to the undersigned on January 12, 2023, by telephone conference call. Skylar J. Limkemann appeared on behalf of CPOA and Wilford Stone appeared on behalf of the City of Coralville. Both parties submitted pre-argument briefs.

At issue is the negotiability status of the proposal (*i.e.*, provision of the parties' 2022 - 2023 collective bargaining agreement) set out below, followed by my preliminary ruling.

ARTICLE
CIVIL SERVICE PROCEEDINGS

Fair Proceedings. The Commission shall ensure that its proceedings are fair and unbiased with the goal of reaching an equitable and just decision in accordance with the law and specific facts and circumstances of the case before the Commission.

Filing with the Clerk of the Commission. The City shall publish the Clerk of the Commission's email address and contact information on its website and shall provide this information to the employee upon request. The parties may use email to make any filing with the Clerk of the Commission, in addition to any other form of filing. Service by electronic means is complete upon transmission, unless the party making service learns that the attempted service did not reach the person to be served. Upon making an email filing with the Commission, the parties shall cross-serve the filing upon the opposing party. The Clerk shall be responsible for service of filings made by means other than email.

Service upon a party represented by an attorney shall be made upon the attorney unless service upon the party is ordered by the Commission. Service upon the Commission is made upon the Clerk of the Commission.

Representation and Conflicts of Interest. The employee shall have the right to the assistance of counsel and union representation.

Upon the filing of a notice of appeal pursuant to section 400.21, the Commission shall promptly seek and retain disinterested legal counsel to represent and advise the commission during the appeal proceedings. The City shall pay the costs incurred by the Commission in employing an attorney under this section.

Upon the filing of a notice of appeal pursuant to section 400.21, a city attorney, assistant city attorney, or solicitor who represents or has represented the Commission shall not represent the City or its officers or employees in an appeal pending before the Commission unless the employee waives the conflict of interest in writing or on the record and the Commission approves the representation.

Recusal of Commission Member. A Commission member who has a conflict of interest or bias against the employee or law enforcement shall recuse himself or

herself from any action or proceedings involved with the employee's action or appeal.

Duty to Disclose. The City shall have a duty to disclose exculpatory information regarding the employee within the City or its officials' knowledge, possession, custody, or control prior to the exchange of exhibits or as soon as possible after such information is available.

Extensions of Time. By agreement of the parties, the (sic) any deadlines under Iowa Code Chapter 400 may be extended. Either party may move for an extension of non-jurisdictional deadlines from the Commission for good cause shown.

Subpoenas. The Commission shall issue subpoenas upon the request of either party, including subpoenas for the production of documents or records.

Pre-Trial Conference Hearing. A party may request a pre-trial conference with the Commission or the Commission may order it on its own to address any pre-trial matters or motions.

Exhibits. The City shall provide its proposed exhibits to the employee no later than fourteen (14) days before trial. The employee shall provide its proposed exhibits to the City no later than seven (7) days before trial. The parties are encouraged to discuss exhibits and compare to limit duplicate exhibits in advance of trial. The parties shall file their final proposed exhibit lists with the Commission no later than two (2) days prior to trial unless otherwise agreed upon. The parties are not required to list rebuttal exhibits or impeachment exhibits.

Redactions of Exhibits and Protective Order. The parties are responsible for the redaction of personal information from exhibits, such as home addresses and contact information, social security numbers, bank account numbers, and other personal information required to be redacted by law or agreed upon by the parties. Either party may move for a protective order as needed to address sensitive or confidential records.

Numbering and Marking of Exhibits. The City shall use numbers. The employee shall use letters. Exhibits longer than one page should include page numbers.

Copies for the Commission and Counsel. Each party must provide a hard copy of their exhibits to be used at trial for the Commission and witness stand. The exhibits must be bound, such as a three-ringed binder, with a copy of the exhibit list at the front, and tabbed and labeled. Electronically stored information, such as video or audio recordings, in addition to the electronic copies of the exhibits, must be provided to the Clerk of the Commission or counsel for the Commission and may be provided on a flash drive, CD, or other suitable electronic media storage device.

Witness Lists. Each party shall prepare a witness list, which shall include the names, addresses, and contact information of the witnesses whom the party will call at trial. Parties are not, however, required to list rebuttal witnesses. The parties shall exchange preliminary witness lists at least five (5) days in advance of trial. The parties shall file final witness lists with the Clerk of the Commission no later than two (2) days in advance of trial. The parties are encouraged to provide each Commission member and the court reporter with a paper copy of their witness list at the time of the trial.

Order for Presentation of the Case at Trial. The City shall present its evidence in support of the Chief of Police's charges first. Once the City rests, the employee shall have the opportunity to present its case to the Commission.

Opening and Closing Statements. The parties shall be entitled to present opening or closing statements to the Commission, or either party may waive their right. The employee may defer its opening statement to after the close of the City's evidence but before the presentation of the employee's case to the Commission.

Technology. The City will ensure that technology and equipment are available for the parties and Commission to use at trial, including audio and visual equipment, projector or TV, large screen(s), outlets, cords to connect to the equipment, and a high-speed internet connection.

Exclusion of Witnesses at Trial. A witness who may testify at the trial must not be permitted to hear the testimony of any other witnesses before testifying and is excluded from the room during the trial until after the witness has completed his or her testimony unless the witness is the employee, the Chief of Police, or the employee's union official. The parties may request the sequestration or exclusion of witnesses, or the Commission may order it on its own.

Briefs. The parties shall have the right to submit pre and/or post hearing briefs to the Commission. Post hearing briefs shall be filed within an agreed upon time or a reasonable time ordered by the Commission. The Commission may grant an extension of the briefing deadline for good cause or issues that could not have reasonably been foreseen.

Deliberations. The Commission shall deliberate in closed session upon the request of the employee.

Factors for Commission Consideration. If the City proves its charges against the employee, the Commission shall consider factors, including the nature of the conduct at issue, the proportionality of the punishment to the conduct at issue, the employee's work history, whether the employee's compliance with the policy was objectively unreasonable in the circumstances, the employee's defenses or justifications, any mitigating factors, and whether the City, its employees, or the

appointing authority acted in accordance with the law, city policies, or standard operating procedures. The Commission shall only consider and impose discipline upon the employee for charges proven by the City.

Decision of the Commission. The final decision of the Commission shall be based upon a majority vote of the Commission, except that removals shall be upon a unanimous vote, made in writing and shall include findings of fact and conclusions of law relied upon, if any, and reasoning or rationale for the decision, separately stated. The Commission shall cause its written decision to be served upon the parties within thirty (30) days of the close of the record or trial or the filing of the final brief unless the party's consent to a later date in writing or on the record.

Record of the Proceedings. The Commission will ensure that the record of the proceedings, including all filings, are maintained by the Clerk of the Commission and are confidential employee records.

Appeal to the District Court. The Commission shall provide a copy of the transcript of the trial and related proceedings to the parties upon the appeal of either party to the district court. The Clerk of the Commission shall reasonably work and cooperate with the parties to ensure that a complete and accurate copy of the Commission record is filed with the district court.

RULING: This proposal is a permissive subject of bargaining.

This preliminary ruling is not final agency action under PERB rule 621—9.1 and PERB rule 621 - 6.3. The Board will issue a final ruling upon the written request of either party, if such request is received within 20 days of the date of this preliminary ruling. Such a request should identify the precise language upon which a final ruling is sought.

Dated at Des Moines, Iowa, this 19th day of January, 2023.



Alla R. Mintzer Zaprudsky
Administrative Law Judge

Electronically filed.
Served via eFlex.