

**STATE OF IOWA  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD**

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IN THE MATTER OF:	)	
	)	
UNI-UNITED FACULTY,	)	
Petitioner,	)	
	)	
and	)	CASE NO. 8502
	)	
STATE OF IOWA (BOARD OF REGENTS,	)	
UNIVERSITY OF NORTHERN IOWA),	)	
Intervenor/Public Employer.	)	
	)	

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RELATIONS BOARD

**DECLARATORY ORDER**

The matter before the Public Employment Relations Board (PERB)<sup>1</sup> is the petition for a declaratory order filed March 19, 2012, by Petitioner UNI-United Faculty (United Faculty). PERB subsequently granted the petition for intervention of the State of Iowa (Board of Regents, University of Northern Iowa). Following receipt of briefs from both parties, PERB heard oral arguments on April 16, 2012.

The pertinent facts are briefly summarized as follows:

United Faculty is the certified bargaining representative of a bargaining unit composed of full-time and regular part-time faculty, including adjunct faculty and professional librarians with faculty status, at the University of Northern Iowa (UNI). United Faculty and the State are parties to a two-year collective bargaining agreement effective through June 30, 2013.

Although no specific date is revealed by the record, at some time the Board of Regents decided and announced that certain program areas at UNI would be

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<sup>1</sup> Board Member Jamie Van Fossén takes no part in this order.

closed or restructured, thus potentially impacting the continued employment of bargaining unit employees in those areas. On March 5, 2012, the Regents approved and adopted a “Proposed 2012 Early Separation Incentive Program” (the ESIP) for certain faculty at UNI. The ESIP, described by the Regents’ agenda minutes as “a tool to shape, redirect, and focus the faculty work force,” provided:

University of Northern Iowa  
Proposed 2012 Early Separation Incentive Program

The proposed ESIP does not create a right for the employee. The request to participate in the program may not be approved if it is deemed not in the best interest of the University of Northern Iowa. Each application will be reviewed on an individual basis and will be subject to the approval of the Executive Vice President and Provost. Acceptance of the application shall be considered as a voluntary resignation effective on the date cited by the applicant on the application form.

The proposed program is a one-time program in which eligible employees have a defined ‘window’ period for application.

**1. Proposed Benefits:**

- (a) Payment of accrued sick leave, not to exceed \$2,000, for those who are either resigning or retiring. For those who meet the requirements to elect retirement, having attained age 55 and applying to begin at least minimum retirement benefits, this payment is made pursuant to IA Code 70.23[sic].
- (b) Payment of one (1) year of salary based upon employee’s appointment salary on the date of retirement or resignation.
- (c) Cash payment equal to the value of eighteen (18) months of COBRA premium for health and dental insurance based upon their coverage contract as of March 6, 2012.

- 2. Eligibility** — Faculty members who hold a tenured appointment as of March 6, 2012 in a program area finally identified for closure and/or restructuring by the University.

Individuals who are in their final year of phased retirement are not eligible to participate in this plan.

**3. Application Requirements:**

(a) Employees who meet the eligibility requirement must apply for the ESIP by April 23, 2012. No applications will be accepted after April 23, 2012. The decision to request such a benefit is voluntary and initiated by the employee. Employees who elect to participate will be provided seven (7) days to revoke their election.

**4. Commencement of Early Retirement:**

(a) Employees must fully resign or retire no later than June 29, 2012.

**5. Re-employment:**

(a) Re-employment into a benefits eligible position is not permitted.

**6. Backfill of Vacated Positions**

(a) Restricted based upon need.

Information packets concerning the ESIP were subsequently provided to faculty who met the eligibility requirements in paragraph 2 of the ESIP description set out above, offering them the opportunity to apply to participate. The Regents have not initiated an involuntary staff reduction pursuant to the procedures contained in the parties' collective agreement and have not determined whether such action will be necessary—a decision which will depend, at least in part, on how many bargaining unit employees apply to participate in the ESIP.

***I. Questions Presented***

United Faculty's petition poses three specific questions: (1) whether paragraph 1(a) of the ESIP is a mandatory topic of bargaining; (2) whether paragraph 1(b) is a mandatory topic of bargaining, and (3) whether paragraph 1(c) is a mandatory topic of bargaining.

The State's petition for intervention responds to these questions, as well as to what it characterizes as United Faculty's "contention that the entire [ESIP] is a mandatory subject of bargaining." The State's brief also characterizes the question of "[w]hether the [ESIP], as a whole, is a procedure for staff reduction and thus a mandatory subject of bargaining" as one which is posed by United Faculty's petition and is directly at issue. During oral arguments, both parties addressed this question and treated it as one which has been presented to PERB.

PERB subrule 621—10.2(4) requires that petitions for declaratory orders include "[t]he specific questions which the petitioner wants answered, stated clearly and concisely." United Faculty's petition does not clearly or concisely pose the question of whether the program as a whole is mandatorily negotiable. Accordingly, PERB would be free to refuse to issue a declaratory order on the question. See Iowa Admin. Code r. 621—10.9(1).

However, because the State has treated the question as one appropriately before PERB and has fully responded to it in its petition for intervention, brief, and oral argument, it is more efficient and reasonable to address it here despite United Faculty's failure to specifically pose it in its petition.<sup>2</sup> For the reasons discussed below, PERB concludes that, except for one provision, the ESIP is within the mandatory topic of bargaining of "procedures for staff reduction."

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<sup>2</sup> Were PERB to refuse to do so, United Faculty would be free to file a new petition which did specifically pose the question. See Iowa Admin. Code r. 621—10.9(3). Such a bifurcated procedure, under the circumstances here, would not be consistent with the general policy of Iowa Code chapter 17A of facilitating and encouraging the issuance of reliable advice by agencies.

## **II. Scope-of-Bargaining Principles**

Although raised in the context of a declaratory order proceeding, the questions presented in this case are precisely the type which typically come before PERB in proceedings for the expedited resolution of disputes concerning the Iowa Code § 20.9 negotiability status of proposals made during the course of collective bargaining. See Iowa Admin. Code r. 621—6.3.

From their arguments and the authorities cited by the parties, it is evident they view the analysis applied in negotiability cases as being applicable here, even though the ESIP, rather than a bargaining proposal, is at issue. Although the negotiability principles enunciated by the courts have emerged in cases analyzing bargaining proposals, PERB agrees that they are equally applicable here.

Subjects of bargaining are divided into three categories: (1) mandatory subjects listed in § 20.9 on which bargaining is required if requested; (2) permissive subjects on which bargaining is permitted but not required (“other matters mutually agreed upon”); and (3) illegal 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. Sch. Dist. v. PERB*, 275 N.W.2d 766, 769 (Iowa 1979).

PERB applies a two-pronged analysis in determining whether a proposal (or here, the ESIP) is a mandatory subject under Iowa Code § 20.9. *Waterloo Educ. Ass’n v. PERB*, 740 N.W.2d 418, 429 (Iowa 2007); *State v. PERB*, 508 N.W.2d 668, 672 (Iowa 1993). First, the proposal must come within the meaning

of a § 20.9 mandatory bargaining subject. Second, the proposal must not be illegal. *Id.*

In determining whether a proposal comes within the meaning of a § 20.9 mandatory bargaining subject, PERB looks only at its subject matter and not its merits. *Charles City Cmty. Sch. Dist.*, 275 N.W.2d at 769. PERB must decide whether the proposal, on its face, fits within a definitionally fixed § 20.9 mandatory bargaining subject. *Waterloo Educ. Ass'n*, 740 N.W.2d at 429; *Clinton Police Dep't Bargaining Unit v. PERB*, 397 N.W.2d 764, 766 (Iowa 1986). In order to make that determination, PERB does not merely search for a topical word listed in § 20.9. *State*, 508 N.W.2d at 675. Rather, PERB looks to what the proposal, if incorporated through arbitration into the collective bargaining agreement, would bind an employer to do. *Charles City Cmty. Sch. Dist.*, 275 N.W.2d at 774; *State*, 508 N.W.2d at 673. The answer to this inquiry reveals the subject, scope, or predominant characteristic or purpose of the proposal. *State*, 508 N.W.2d at 673; *Waterloo Educ. Ass'n*, 740 N.W.2d at 427. If the proposal's predominant characteristic, topic, or purpose is within a listed § 20.9 category, and the proposal is not illegal, it is mandatory. If the proposal's predominant characteristic, topic or purpose is not within a listed § 20.9 category, and the proposal is not illegal, it is permissive.

Early Supreme Court cases espoused giving a narrow and restrictive meaning to the § 20.9 mandatory topics. *See, e.g., City of Fort Dodge v. PERB*, 275 N.W.2d 393, 398 (Iowa 1979); *Marshalltown Educ. Ass'n v. PERB*, 299 N.W.2d 469, 470 (Iowa 1980). The Court subsequently adopted a more

expansive meaning of the word “procedures” as used in the § 20.9 topics of “transfer procedures” and “procedures for staff reduction,” holding that the substantive criteria to be considered in making transfers or staff reductions were within the meaning of those topics. *Saydel Educ. Ass’n v. PERB*, 333 N.W.2d 486, 488-89 (Iowa 1983). Most recently, the Court has clarified that the § 20.9 mandatory topics are to be given their common and ordinary meanings, rather than their narrowest possible interpretations. *Waterloo Educ. Ass’n*, 740 N.W.2d at 429-30. They cannot, however, be interpreted so expansively that other mandatory topics become redundant. *Id.*

### **III. Application of Principles**

Neither party has suggested that bargaining over the existence or terms of an early separation incentive program would be illegal under Iowa law. Thus, the second prong of the negotiability analysis is of no concern. The result here turns instead on the first prong, namely, whether the matter comes within the meaning of the § 20.9 topics identified by United Faculty—“procedures for staff reduction,” “wages,” and “insurance.”<sup>3</sup>

#### **A. Procedures for Staff Reduction**

The ESIP operates by first soliciting volunteers from discontinued or restructured programs who are willing to resign their faculty positions in exchange for a stated financial incentive. It then provides the employer with an

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<sup>3</sup> As PERB understands United Faculty’s argument, it asserts that the ESIP as a whole is within the “procedures for staff reduction” topic, that paragraphs 1(a) and 1(b) of the ESIP description are within the “wages” topic, and that paragraph 1(c) is within the topic of “insurance.”

opportunity to accept the resignations of those volunteers whose departure it deems most advantageous, based upon its assessment of UNI's best interests.

The predominant purpose, goal, characteristic, or topic of the ESIP is the reduction of the number of tenured faculty in certain program areas. That it constitutes a procedure, with staff reduction as its purpose, is apparent. The State virtually admits as much by its description of the ESIP as "a tool to shape, redirect, and focus the faculty work force" at UNI and by its acknowledgement that the ESIP is designed to induce eligible employees to voluntarily leave their employment.

The State points out that PERB has described the topic of "procedures for staff reduction" as including the order and manner in which staff reduction will occur<sup>4</sup> and argues that the ESIP does not address the order and manner of staff reduction. PERB has never indicated that "procedures for staff reduction" are limited to the order and manner in which reductions will occur, only that the topic includes those matters. But even were this not the case, the ESIP still relates to the order in which staff reduction occurs—its effect is to place those volunteers whose incentivized offers to resign are accepted first in the order of staff to be reduced.

PERB has also observed that "procedures for staff reduction" encompasses the concept of layoff as a temporary separation from employment and includes provisions concerning recall. *Woodward-Granger Cmty. Sch. Dist.*, 77 PERB 1016. The State argues that the ESIP is not a layoff procedure because the

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<sup>4</sup> See *Bettendorf & Dubuque Cmty. Sch. Dists.*, 76 PERB 598 & 602.

termination of the participants' employment is voluntary, with no possibility of recall or re-employment. The essence of the State's argument thus appears to be that "procedures for staff reduction" within the meaning of § 20.9 really means "procedures for *involuntary* staff reduction."

Had the legislature intended to so limit the topic it could have easily done so. But it did not. Inserting the requirement of involuntariness into the topic does not give "procedures for staff reduction" a common and ordinary meaning, but instead gives it an unduly narrow one, contrary to the Court's direction in *Waterloo Education Association*. 740 N.W.2d at 429-30. And while it is true that in *Woodward-Granger Community School District* the Board characterized "procedures for staff reduction" as including the concept of layoff (*i.e.*, involuntary separation) and recall, it was logical to do so because that was the type of staff reduction contemplated by the proposals in that case. But neither PERB nor the Court has ever adopted an all-encompassing definition of the topic which includes involuntariness as an element.

Nor does *Fort Dodge Community School District v. PERB*, 319 N.W.2d 181 (Iowa 1982), also cited by the State, require or support the conclusion that the ESIP is merely a permissive topic of bargaining. In *Fort Dodge Community School District*, the Court held that the early retirement incentive program there at issue was not a subject of mandatory bargaining as "wages" or "supplemental pay," but specifically noted that it was not addressing the claim that the program was mandatory as a "procedure for staff reduction," that claim having not been asserted below. *Id.* at 184.

With the exception of its paragraph 6, the ESIP is a procedure, the purpose, subject, effect, and predominant characteristic of which is the reduction of bargaining unit staff.<sup>5</sup> It is, in the common and ordinary as well as literal sense of the words, a procedure for staff reduction and thus a mandatory subject of bargaining.

**B. Wages and Insurance**

PERB has rejected the notion that a proposal can properly be classified as being within more than one § 20.9 subject category, due to the need for Iowa Code § 20.22 arbitrators to make their selections on an “impasse item” (*i.e.*, § 20.9 topic) basis. *Michelstetter & Henry County & PPME*, 10 PERB 8242. PERB’s conclusion that the ESIP is within the scope of the “procedures for staff reduction” topic thus necessarily presages its view of United Faculty’s claims that components of the program are within the topics of “wages” and “insurance.”

The predominant characteristic of the ESIP is staff reduction. The cash incentive calculated in accordance with paragraphs 1(a), 1(b), and 1(c) of the program description is an integral and fundamental aspect of the staff reduction procedure, rather than compensation to employees for their labor or services or any kind of insurance benefit. It is unnecessary to dissect the various PERB and appellate court cases concerning the § 20.9 topics of “wages” and “insurance” because it is apparent that paragraphs 1(a) and 1(b),

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<sup>5</sup> Paragraph 6 of the ESIP description addresses the “backfill” of positions vacated by participating employees, rather than any aspect of staff reduction, such as recall. Its topic is thus distinct from the other portions of the procedure, and is not a mandatory subject of bargaining.

individually or in combination, are not within the common and ordinary meaning of “wages” and paragraph 1(c) is not within the common and ordinary meaning of “insurance”. The fact that the cash incentive is calculated, in part, by reference to the participating employee’s pre-resignation wages and group insurance premiums does not alter the predominant characteristic or topic of the ESIP.

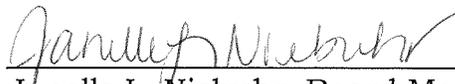
**IV. Conclusion**

In response to the questions posed by United Faculty’s petition, PERB concludes that paragraphs 1(a), 1(b), and 1(c), individually or in combination, do not come within the Iowa Code § 20.9 topics of “wages” or “insurance.” PERB further concludes that the ESIP as a whole, except for its paragraph 6, within the § 20.9 topic of “procedures for staff reduction” and is thus a mandatory subject of bargaining.

DATED at Des Moines, Iowa, this 30<sup>th</sup> day of May, 2012.

PUBLIC EMPLOYMENT RELATIONS BOARD

  
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