

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF:)

FORT DODGE COMMUNITY SCHOOL)
DISTRICT,)
Petitioner/Public Employer,)

and)

FORT DODGE EDUCATION ASSOCIATION,)
FORT DODGE MAINTENANCE EMPLOYEES)
BARGAINING UNIT (BUS DRIVERS), FORT)
DODGE EDUCATION ASSOCIATION)
(ASSOCIATES), FORT DODGE SECRETARIAL/)
CLERICAL EDUCATION ASSOCIATION, FORT)
DODGE MAINTENANCE EMPLOYEES)
BARGAINING UNIT (BLUE COLLAR),)
Certified Employee Organizations.)

CASE NO. 8512

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PUBLIC EMPLOYMENT
RELATIONS BOARD

RULING ON NEGOTIABILITY DISPUTE

On April 30, 2012, the Fort Dodge Community School District (District) filed a petition with the Public Employment Relations Board (PERB or Board) pursuant to PERB rule 621–6.3(20) seeking the Board's ruling on whether certain language proposed for inclusion in its collective bargaining agreements with the Certified Employee Organizations—Fort Dodge Education Association, Fort Dodge Maintenance Employees Bargaining Unit (Bus Drivers), Fort Dodge Education Association (Associates), Fort Dodge Secretarial/Clerical Education Association, and Fort Dodge Maintenance Employees Bargaining Unit (Blue Collar)—are mandatory subjects of bargaining. Oral arguments were presented to the Board by counsel for the parties on May 9, 2012. Both parties filed briefs.¹ The Board issued a preliminary ruling on the negotiability dispute on May 23,

¹ Andrew Bracken and Susan Bernau for the District and Jay Hammond for the Certified Employee Organizations.

2012, ruling that the language at issue was a mandatory subject of bargaining. On May 30, 2012, the District requested a final ruling on the negotiability dispute.

The language at issue is as follows:

PROPOSAL 1 (proposal by the Fort Dodge Education Association)

Article XII Wages

I. After ten (10) or more years of service, severance pay shall be promptly made to each employee in an amount equivalent to fifty percent (50%) of the per diem pay of the employee's beginning base salary in the year of separation from the District and shall be equivalent to all unused sick leave days (not to exceed 120) which the individual had accumulated but did not use during employment with the District. Employee initiated resignations must be submitted in writing by May 1 to qualify for severance pay. Exceptions to the May 1 deadline may be made at any time in cases of employee illness or disability, employee death, transfer of an employee's spouse outside the District, marriage and relocation outside the District, resignations at the request of the Board, or other circumstances allowed by the Board of Education. In the event that an employee who has been terminated elects to receive severance pay at the time of termination, that employee agrees to repay the entire severance pay upon recall, or to repay the severance pay in a manner mutually agreeable between the Board of Education and the individual employee. This article will cover all employees hired prior to July 1, 2006.

PROPOSAL 2 (proposal by the Fort Dodge Maintenance Employees Bargaining Unit (Bus Drivers))

Article X: Hours of Work

C. Severance.

After the tenth year of continuous service to the District, an employee will receive severance pay using the following formula: ninety percent (90%) of an individual's unused sick leave (capped at 120 days) times the base hourly rate during the current contract year, times four (4) hours per day. This article will cover all employees hired prior to July 1, 2006.

PROPOSAL 3 (proposal by the Fort Dodge Education Association (Associates))

Article X: Hours of Work

Severance

A. Either upon retirement or upon leaving the District after ten (10) years of continuous service, severance pay shall promptly be made to the employee in the amount of minimum wage times the number of hours per day the employee worked times the number of days of unused personal illness leave (up to 120 days) which the individual had accumulated but did not use during employment with the District. This article will cover all employees hired prior to July 1, 2007.

PROPOSAL 4 (proposal by the Fort Dodge Secretarial/Clerical Education Association)

Article X: Hours of Work

D. Severance

After ten (10) years of continuous service, the employee will receive 100% of the following formula: current hourly average of all eligible employees times the number of hours worked per day times the number of unused sick leave days capped at one hundred twenty (120) days. For each additional year after the tenth (10th) year an additional \$.01 will be added to the individual's hourly rate for severance. This will be capped at \$.40. This article will cover all employees hired prior to July 1, 2006.

PROPOSAL 5 (proposal by the Fort Dodge Maintenance Employees bargaining Unit (Blue Collar employees))

Article X: Hours of Work

C. Severance

When an employee retires or leaves the District after ten (10) years of continuous service, severance pay shall be made promptly to the employee at his/her hourly rate of pay on the date of separation times eight (8) hours per day for all unused sick leave days (capped at 105 days) which the individual had accumulated but did not use during employment with the District. Employees involuntarily terminated shall not be eligible for receipt of severance pay unless the employee is laid off, terminated for reasons of health, or separated for other reasons not the fault of the employee. In the event that an employee who has been terminated elects to receive severance pay at the time of layoff, the employee agrees to repay the entire severance pay upon recall or to repay the severance pay

in another manner acceptable to the Board of Education. This article will cover all employees hired prior to July 1, 2007.

I. HISTORY OF SCOPE-OF-BARGAINING PRINCIPLES

Since the early days of the Public Employment Relations Act (PERA), the courts and the parties have accepted without serious question certain interpretive principles pertinent to the scope of collective bargaining under the Iowa Code chapter 20 and the determination of the negotiability status of collective bargaining proposals. These include the ideas that the legislature did not adopt the broad scope of mandatory bargaining provided for in the National Labor Relations Act (NLRA), 29 U.S.C. sections 151, *et. seq.*, and that the section 20.9 laundry list of mandatory bargaining topics is exclusive and definitional, rather than merely descriptive. Two other scope-of-bargaining principles have, however, been the subjects of disagreement, at least until relatively recently.

The first of these questioned principles was that the Iowa Code section 20.9 mandatory topics of bargaining were to be interpreted narrowly and restrictively. *City of Fort Dodge v. PERB*, 275 N.W.2d 393, 398 (Iowa 1979); *Charles City Cmty. Sch. Dist. v. PERB*, 275 N.W.2d 766, 773 (Iowa 1979) (hereinafter *Charles City CSD*). The second was that, in determining the negotiability status of a bargaining proposal, the employee right to bargain the section 20.9 topics needed to be reconciled or harmonized with the section 20.7 rights of the public employer. *Id.* at 775.

Both of these debatable concepts spawned a number of early dissenting opinions that rejected the narrow and restrictive approach to interpreting the section 20.9 topics, the idea that harmonizing the right to bargain and management rights was necessary, or both. According to the dissenters, the individual topics of bargaining should be given their common and ordinary, rather than a narrow and restrictive, meaning, and there is no need to harmonize or balance sections 20.7 and 20.9 because the section 20.9 topics are exceptions to the section 20.7 management rights. *See, e.g., City of Fort Dodge*, 275 N.W.2d at 399; *Charles City CSD*, 275 N.W.2d at 775-76; *Fort Dodge Cmty. Sch. Dist. v. PERB*, 319 N.W.2d 181, 185-86 (Iowa 1982) (hereinafter *Fort Dodge CSD*).

While the Court effectively adopted the approach of the dissenters (rejecting the need to reconcile or balance sections 20.7 and 20.9) in *Northeast Community School District v. PERB*, 408 N.W.2d 46 (Iowa 1987) (hereinafter *Northeast CSD*), and reaffirmed that view in *State v. PERB*, 508 N.W.2d 668 (Iowa 1993), it returned, without explanation, to the “impingement” or balancing methodology in *Iowa City Association of Firefighters, IAFF Local 610 v. PERB*, 554 N.W.2d 707 (Iowa 1996). In *Iowa City Firefighters*, the Court cited *State* but nonetheless held that the proposals before it were permissive subjects of bargaining because they impinged on management’s section 20.7 rights, even though this “impingement” rationale was inconsistent with the *State* view that the section 20.9 mandatory topics are exceptions to

management rights, all of which impinge on management rights in some way. *Iowa City Firefighters*, 554 N.W.2d at 711.

The legacy of *City of Fort Dodge* and *Charles City CSD*—that the individual section 20.9 topics were to be given a narrow and restrictive meaning—also persisted. See, e.g., *Marshalltown Educ. Ass’n v. PERB*, 299 N.W.2d 469, 470 (Iowa 1980); *Saydel Educ. Ass’n v. PERB*, 333 N.W.2d 486, 488 (Iowa 1983); *Prof’l Staff Ass’n of AEA 12 v. PERB*, 373 N.W.2d 516, 519 (Iowa App. 1985) (hereinafter *Prof’l Staff Ass’n* or *Professional Staff Association*); *Clinton Police Dep’t Bargaining Unit v. PERB*, 397 N.W.2d 764, 766 (Iowa 1986); *City of Dubuque v. PERB*, 444 N.W.2d 495, 497 (Iowa 1989); *Decatur County v. PERB*, 564 N.W.2d 394, 396-97 (Iowa 1997); *Waterloo Cmty. Sch. Dist. v. PERB*, 650 N.W.2d 627, 630 (Iowa 2002) (hereinafter *Waterloo I*).

But the landscape changed appreciably in 2007 when the Iowa Supreme Court decided *Waterloo Education Association v. PERB*, 740 N.W.2d 418 (Iowa 2007) (hereinafter *Waterloo II*), in which it provided its most comprehensive review of its prior scope-of-bargaining pronouncements and clarified the principles governing the proper analytical approach to negotiability questions and the interpretation of Iowa Code section 20.9. *Waterloo II* addressed an employee organization’s proposal which called for the payment of so-called overload pay for employees assigned teaching loads in excess of stated benchmarks, which the employee organization argued was mandatorily negotiable under the section 20.9 topic of “wages.”

Waterloo II is of major significance because it rejected both of the scope-of-bargaining principles which had been the subject of criticism by the dissenting justices in *City of Fort Dodge*, *Charles City CSD*, and *Fort Dodge CSD*. First, the unanimous Court explicitly rejected the “impingement” or “threshold balancing” test which had been employed in *Waterloo I* and *Iowa City Firefighters*, and specifically disapproved those cases to the extent they had employed such an approach. *Waterloo II*, 740 N.W.2d at 428. The Court emphasized that the first prong of the two-pronged negotiability approach described in *State* and *Northeast CSD* is a definitional exercise—a determination of whether a proposal fits within the scope of a specific term listed in section 20.9. *Id.* at 429. Except in the unusual case where the predominant topic of a proposal cannot be determined, no balancing of employee and employer interests is necessary because the legislature has already done the balancing by creating the section 20.9 laundry list of mandatory topics. *Id.*

In applying the first prong of the two-pronged negotiability analysis, the Court necessarily considered the proper definition of “wages” (the section 20.9 topic the employee organization claimed its proposal fell within) and in doing so addressed the second of the principles which had been the subject of criticism by the early dissenters—the matter of how the section 20.9 topics were to be interpreted. The Court stated:

[B]ecause the legislature has listed the term “wages” in section 20.9 as a topic separate and apart from other tangible employee benefits, such as vacation and

insurance, the term “wages” is subject to a relatively narrow construction in order to avoid an interpretation that renders subsequent items in the laundry list redundant and meaningless. Under these cases, the term “wages” cannot be interpreted to include a broad package of fringe benefits because the legislature has specifically included some fringe benefits in this section’s laundry list. . . .

On the other hand, the legislature’s use of a laundry list of negotiable subjects does not mean that the listed terms are subject to the narrowest possible interpretation, but only that the listed terms cannot be interpreted in a fashion so expansive that the other specifically identified subjects of mandatory bargaining become redundant. The approach most consistent with legislative intent thus is to give the term “wages” its common and ordinary meaning within the structural parameters imposed by section 20.9.

Waterloo II, 740 N.W.2d at 429-30 (citations omitted).

This express subscription to the principle that the section 20.9 topics are to be given their common and ordinary meaning is a further adoption of the views of the dissenters in the early scope-of-bargaining cases, and an implicit disapproval of the interpretive approach employed in those cases which prescribed or in fact applied narrow and restrictive meanings to the individual section 20.9 topics.

Accordingly, when determining the negotiability status of a proposal in the wake of *Waterloo II*, it is necessary that the Board consider not only the appellate court precedents concerning the meaning of a given section 20.9 topic, but also whether those precedents were the result of the application of the now-disapproved narrow and restrictive approach to interpretation and

should no longer be viewed as controlling authority. With this history in mind, the Board now turns to the negotiability disputes at issue in this matter.

II. STANDARD AND SCOPE FOR NEGOTIABILITY DISPUTES

As stated above, it is well settled that a proposal must fall within the scope of one of the topics listed in Iowa Code section 20.9 to be a mandatory subject of bargaining. Topics for which bargaining is required are wages, hours, vacations, insurance, holidays, leaves of absence, shift differentials, overtime compensation, supplemental pay, seniority, transfer procedures, job classifications, health and safety matters, evaluation procedures, procedures for staff reduction, in-service training, terms authorizing dues checkoff, and grievance procedures. Iowa Code § 20.9 (2011). The parties may also bargain on “other matters mutually agreed upon,” referred to as permissive subjects of bargaining. *Id.* A proposal’s negotiability status is significant because only mandatory subjects of bargaining may proceed through statutory impasse procedures to binding arbitration, unless the parties agree otherwise. *Decatur County*, 564 N.W.2d at 396.

When determining whether a certain proposal is a mandatory subject of bargaining, the Board uses the two-pronged approach set forth in *State* and *Northeast CSD* and endorsed in *Waterloo II*. First, the Board engages in a definitional exercise to determine whether the proposal fits within the scope of a specific term listed in section 20.9. *Waterloo II*, 740 N.W.2d at 429. If this threshold topics test is met, the next inquiry is whether the proposal is preempted or inconsistent with any provision of law. *Id.* Ordinarily, this two-

step process resolves the question of negotiability, which does not involve considering whether the proposal infringes on management rights. *Id.* However, in the unusual case where the predominant topic of the proposal cannot be readily determined, the Board will engage in a balancing-type analysis to resolve the issue. *Id.*

In determining whether a proposal comes within the meaning of a section 20.9 mandatory bargaining subject, PERB looks only at its subject matter and not its merits. *Charles City CSD*, 275 N.W.2d at 769. PERB must decide whether the proposal, on its face, fits within a definitionally fixed section 20.9 mandatory bargaining subject. *Waterloo II*, 740 N.W.2d at 429; *Clinton Police Dep't*, 397 N.W.2d at 766. In order to determine that, PERB does not merely search for a topical word listed in section 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 CSD*, 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 II*, 740 N.W.2d at 427. If the proposal's predominant characteristic, topic, or purpose is within a listed section 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 section 20.9 category, and the proposal is not illegal, it is permissive.

III. ANALYSIS

The Board begins its analysis by determining the predominant characteristic, topic, or purpose of the proposals at issue. *See Waterloo II*, 740 N.W.2d at 429. The parties seemingly agreed that the predominant purpose of the proposals is severance pay and that the negotiability status of the proposals should be determined utilizing a definition of “supplemental pay.” The Board agrees. While there may be arguments that the proposals could be analyzed under “leaves of absence,” the predominant purpose of the proposals is to pay an employee some monetary amount that is not “wages” as that term has been defined, and thus, is most closely associated with “supplemental pay.”

A. Definition of Supplemental Pay

Next, the Board must define “supplemental pay” as that term is used in section 20.9. The ultimate goal when interpreting statutory provisions and terms is to give them their legislative intent. *Teamsters Local Union No. 421 v. City of Dubuque*, 706 N.W.2d 709, 713-14 (Iowa 2005). Intent must be gleaned from “what the legislature said, not from what it might or should have said.” *Iowa Network Servs., Inc. v. Iowa Dep’t of Revenue*, 784 N.W.2d 772, 777 (Iowa 2010) (citation and quotation marks omitted). If the language is clear and unambiguous, PERB applies the plain and rational meaning of the statute. *City of Waukee v. City Dev. Bd.*, 590 N.W.2d 712, 717 (Iowa 1999). If, however, reasonable minds could disagree over the meaning of a word or phrase in a

statute, it is ambiguous. *Id.* PERB then applies rules of statutory construction to determine the intent of the legislature. *Id.*

As evidenced by the varying definitions proposed by the parties and definitions historically used by PERB and the courts, reasonable minds do disagree over the meaning of “supplemental pay,” and it is, therefore, ambiguous. Thus, it is necessary for the Board to employ rules of statutory construction to ascertain legislative intent. In *Waterloo II*, the Supreme Court directed the use of two rules of construction when defining the section 20.9 terms: (1) using a term’s common and ordinary meaning and (2) interpreting the term within the context of the statute. 740 N.W.2d at 429-30. The Court stated “that the listed terms are [not] subject to the narrowest possible interpretation” and that they

cannot be interpreted in a fashion so expansive that the other specifically identified subjects of mandatory bargaining become redundant. The approach most consistent with legislative intent thus is to give the term[s their] common and ordinary meaning[s] within the structural parameters imposed by section 20.9.

Id. (citations omitted).

As the Court noted, it is apparent from the legislature’s adoption of a laundry list, rather than an expansive provision for “other terms and conditions,” that the universe of mandatory bargaining under the PERA is more discrete than that under the NLRA. *Id.* at 429. It is also clear that the terms listed in section 20.9 represent the topics the legislature deemed mandatory. But, it remains unclear what meaning the legislature assigned each term.

Some items are far more straight-forward than others. For example, there has been little argument over what the legislature intended “overtime compensation” or “shift differentials” to mean. Those topics were well-defined in the context of labor relations at the time of the PERA’s enactment, and their definitions were not altered or affected by any other term in the laundry list.

On the other hand, “supplemental pay” as used in the PERA is not so easily defined, particularly in light of other terms listed in section 20.9. By way of example, a leading dictionary for labor-relation terms defines “supplements to wages and salaries” as “[a]ll additions or supplements to the basic wage or the salary rate.” *Roberts’ Dictionary of Industrial Relations* 699 (3rd ed. 1986). This definition could be easily understood to encompass numerous other terms listed in section 20.9, such as overtime compensation, shift differentials, insurance, holidays, and vacations. Thus, the definition must be too broad under Iowa law because *Waterloo II* teaches that “terms cannot be interpreted in a fashion so expansive that other specifically identified subjects of mandatory bargaining become redundant.” 740 N.W.2d at 430.

But one need look no further than prior PERB and Iowa court decisions to see varying definitions of “supplemental pay.” In the PERA’s infancy, PERB routinely held that proposals regarding both cash and in-kind compensation were mandatory subjects of bargaining under “supplemental pay.” In the first few years after the PERA’s enactment, PERB deemed mandatory proposals regarding clothing allowances, payment of monthly parking charges, tuition reimbursement, sick-leave buy-back, and annuity contributions. *See, e.g., City*

of Fort Dodge & Local 6-502, Oil, Chem., & Atomic Workers Int'l Union, AFL-CIO, No. 970, slip op. at 2 (PERB Apr. 1, 1977) (clothing allowance held mandatory); State & Am. Fed'n of State, County & Mun. Employees, AFL-CIO, No. 1000, slip op. at 3-4 (PERB May 12, 1977) (employer payment of monthly parking charges held mandatory); City of Sioux City & Sioux City Prof'l Fire Fighters Ass'n, Local 7, No. 1199, slip op. at 1 (PERB Feb. 16, 1978) (tuition reimbursement held mandatory); City of Council Bluffs & Am. Fed'n of State, County & Mun. Employees, Local 2844, No. 1245, slip op. at 1-2 (PERB May 16, 1978) (sick-leave buy-back proposal held mandatory); Se. Cmty. Coll. & Se. Cmty. Coll. Higher Educ. Ass'n., No. 1251, slip op. at 3 (PERB May 16, 1978) (employer annuity contributions held mandatory).

Perhaps most enlightening to the discussion in the present matter is PERB's early stance that "severance pay is clearly a mandatory subject of negotiations." *Charles City Cmty. Sch. Dist. & Am. Fed'n of State, County & Mun. Employees, AFL-CIO, Local No. 1734, No. 661, slip op. at 3 (PERB Oct. 1, 1976) (proposal held non-mandatory on other grounds).* During the first five years of its existence, PERB regularly held severance pay proposals mandatory subjects of bargaining. *See, e.g., Area IV Cmty. Coll. Educ. Ass'n & Merged Area IV Sch. Dist., Nos. 663 & 674, slip op. at 5 (PERB Apr. 9, 1976); City of Davenport & Davenport Ass'n of Prof'l Fire Fighters, No. 1244, slip op. at 3-4 (PERB May 1, 1978).*

In 1979, the Supreme Court held that a proposal, which required the employer provide employees with work clothing, was permissive. *City of Fort*

Dodge, 275 N.W.2d 393. In so holding, the Court cited the trial court’s distinction between “supplemental pay” and “supplemental benefit” and stated that the terms used in section 20.9 have a “restrictive and narrow application.” *Id.* at 398. The dissent disapproved of the majority’s approach and favored giving the section 20.9 terms their plain and ordinary meanings. *Id.* at 399 (McCormick, J., dissenting).

PERB interpreted this decision to mean that in-kind benefits could not be mandatory, but cash supplements may still be mandatory under “supplemental pay.” See *State & State Police Officers Council*, Nos. 1846 & 1855, slip op. at 7-10 (PERB Jan. 23, 1981) (hereinafter *SPOC*). In *SPOC*, PERB stated that:

[A]n interpretation that both wages and supplemental pay must be direct payments for a particular unit of work or unit of time worked makes the term “supplemental pay” superfluous in Section 9 If supplemental pay is no more than ‘wages’ for supplemental work, it needn’t have been included in the statute, as it is management which defines workload in the first place. Thus, a holding that supplemental pay, like wages, must be directly related to some particular unit of service rendered has the consequence of making supplemental pay a superfluous addition to Section 9 of the Act.

* * *

A broader application of the concept of pay as compensation for services rendered, which would include such matters as reimbursement for expenses incurred in the service of the employer and repayment of expenses resulting from a relocation mandated by and for the convenience of the employer would seem consistent with [*City of*] *Fort Dodge*.”

* * *

[P]roposals for cash payments supplemental to wages fall precisely within the meaning of the term 'supplemental pay' in Section 9.

Id. at 9-10. PERB cases in the ensuing years clearly distinguished proposals with cash emoluments, holding them mandatory, from those with in-kind benefits, holding them permissive. Compare *Fort Dodge Educ. Ass'n & Fort Dodge Cmty. Sch. Dist.*, No. 1474, slip op. at 6 (PERB Dec. 21, 1979) (cash payment in early retirement incentive program held mandatory); *W. Hills Area Educ. Agency 12 & Prof'l Staff Ass'n of Area Educ. Agency 12*, No. 1848, slip op. at 12-15 (PERB Feb. 6, 1981) (cash payment for moving expenses held mandatory); *City of Cedar Falls & Int'l Ass'n of Firefighters, Local 1366*, No. 1911, slip op. at 2-6 (PERB Feb. 20, 1981) (cash allowances for clothing and food held mandatory) with *Jefferson Cmty. Educ. Ass'n & Jefferson Cmty. Sch. Dist.*, No. 1578 (PERB Apr. 10, 1980) (providing free activity tickets held permissive); *SPOC*, Nos. 1846 & 1855, slip op. at 7-10 (use of state vehicles held permissive).

Then, in 1982, the Supreme Court decided *Fort Dodge CSD*. There, the Court defined "supplemental pay" as "pay for services rendered" that are "based upon extra services and directly related to the time, skill, and nature of those services." *Fort Dodge CSD*, 319 N.W.2d at 184. The Court based this definition on the narrow and restrictive approach to interpreting the section 20.9 topics set forth in *City of Fort Dodge*. *Id.* at 183. But the dissenters again denounced the majority's adoption of a narrow and restrictive definition and

endorsed PERB's approach to "supplemental pay" issues. *Id.* at 184-86 (McCormick, J., dissenting).

Following *Fort Dodge CSD*, PERB did adhere to the Court's definition of "supplemental pay," rejecting all proposals outside the confines of that definition. *See, e.g., W. Hills Area Educ. Agency 12 & Prof'l Staff Ass'n of Area Educ. Agency 12*, No. 2337, slip op. at 15 (PERB Feb. 4, 1983) (severance pay held permissive). PERB repeatedly stated its conclusions were based on the narrow and restrictive definition given the term by the Court and expressed some doubt that the definition was in line with the intent of the legislature. *See Great River Area Educ. Agency 16 & Se. Iowa Special Educ. Employees Ass'n*, Nos. 2372 & 2384, slip op. at 12 (PERB Feb. 8, 1983). *See also Grant Wood Area Educ. Agency & Grant Wood Area Educ. Ass'n*, No. 2438, slip op. at 3 (PERB Mar. 14, 1983). In *Grant Wood*, PERB commented that:

The Association in this case asks us to reverse the [decision holding economic fringe benefits permissive subjects of bargaining] and hold travel expenses mandatory as supplemental pay. It advances on behalf of that argument Chapter 9 of the Laws of the 69th General Assembly, 1981 Session. In that statute, the Iowa legislature enacted the following provision:

Section 24. It is a condition of the appropriations made in this Act that mileage expense reimbursement rates or payments shall not be negotiated or included in a proposed collective bargaining agreement under Chapter 20 during the biennium beginning July 1, 1981 and ending June 30, 1983.

The Association points out that the above enactment did not become law, but was item vetoed by Governor

Robert D. Ray. In transmitting his veto message to Secretary of State Mary Jane Odell on June 19, 1981, Governor Ray stated:

Chapter 20 of the Iowa Code establishes a collective bargaining system for state government. This system received a great deal of public scrutiny and legislative debate prior to its being passed into law. The scope of those negotiations, listed in Section 20.9 of the Code of Iowa, received considerable attention by lawmakers and the mileage reimbursement was decided to be a negotiable item in a collective bargaining agreement.

The Association contends that from the Governor's item veto it must be concluded that mileage reimbursement was intended to be bargainable under Section 9 and should be held so now.

We do not necessarily disagree with the Association's contention that the legislature which enacted Chapter 20 may have intended that such matters as mileage reimbursement be subject to negotiation. We have stated as much in our decisions and contended as much before the Supreme Court. Nonetheless, the Court has repeatedly rejected an interpretation of Section 9 topics which would encompass such matters as uniform allowances, severance pay or, as here, travel allowances. Rather, unless such matters can be interpreted as "pay based upon extra services and directly related to the time, skill, and nature of the additional services," a party cannot insist upon their negotiation.

No. 2438, slip op. at 5-6. Bound by precedent, PERB and the courts utilized a narrow and restrictive definition of "supplemental pay" for the next 24 years, concluding proposals for severance pay, among others, were permissive as they were not additional pay for additional services. *See, e.g., Prof'l Staff Ass'n*, 373

N.W.2d at 518-19 (holding severance pay permissive based on the Supreme Court's restrictive definition).

All that changed in 2007. In *Waterloo II*, the Supreme Court implicitly rejected the narrow and restrictive definitions of section 20.9 terms from cases past and directed the usage of common and ordinary meanings, adding the caveat that the meaning must be "within the structural parameters imposed by section 20.9." 740 N.W.2d at 430. With that directive, the Board must reexamine even the most absolute pronouncement on the negotiability status of a certain subject, such as severance pay, if the section 20.9 term under consideration was defined narrowly and restrictively. This includes the definition of "supplemental pay" as announced and applied in *Fort Dodge CSD* and *Professional Staff Association*. Thus, in the wake of *Waterloo II*, the Board is left with the question of what is the common and ordinary meaning of "supplemental pay" in the context of section 20.9.

Dictionaries are often used to determine the common and ordinary meaning of words. *Waterloo II*, 740 N.W.2d at 430. As mentioned above, *Roberts' Dictionary of Industrial Relations* defines "supplements to wages and salaries" as "[a]ll additions or supplements to the basic wage or the salary rate." *Roberts' Dictionary of Industrial Relations* 699. *Black's Law Dictionary* defines "supplemental" as "[s]upplying something additional; adding what is lacking" and "payment" as "2. The money or other valuable thing so delivered in satisfaction of an obligation." *Black's Law Dictionary* 1165, 1480 (8th ed. 1999).

Merriam Webster's defines "supplemental" as "1: serving to supplement" and "supplement" as "1: something that completes or makes an addition <dietary ~s> . . . to add or serve as a supplement to <does odd jobs to ~ his income>." *Merriam Webster's Collegiate Dictionary* 1184 (10th ed. 1994). "Pay" is defined as:

vb . . . **1a:** to make due return to for services rendered or property delivered **b:** to engage for money: HIRE <you couldn't ~ me to do that> **2a:** to give in return for goods or service <~ wages> **b:** to discharge indebtedness for: SETTLE <~ a bill> **c:** to make a disposal or transfer of (money) **3:** to give or forfeit in expiation or retribution <~ the penalty> **4a:** to make compensation for **b:** to requite according to what is deserved <~ them pack> . . . – used with *out* ~ *vi* **1:** to discharge a debt or obligation

* * *

syn PAY, COMPENSATE, REMUNERATE, SATISFY, REIMBURSE, INDEMNIFY, REPAY, RECOMPENSE mean to give money or its equivalent in return for something. PAY implies the discharge of an obligation incurred <paid their bills on time>. COMPENSATE implies a making up for services rendered or help given <an attorney well *compensated* for her services>. REMUNERATE more clearly suggests paying for services rendered and may extend to payment that is generous or not contracted for <promised to *remunerate* the searchers handsomely>. SATISFY implies paying a person what is demanded or required by law <all creditors will be *satisfied* in full>. REIMBURSE implies a return of money that has been expended for another's benefit <*reimbursed* employees for expenses>. INDEMNIFY implies making good a loss suffered through accident, disaster, warfare <*indemnified* the families of the killed miners>. REPAY stresses paying back an equivalent in kind or amount <*repay* with a favor>. RECOMPENSE suggests due return in amends, friendly repayment, or reward <hotel guests were *recompensed* for the inconvenience>.

* * *

n (14c) **1**: something paid for a purpose and esp. as a salary or wage: RENUMERATION **2a**: the act or fact of paying or being paid **b**: the status of being paid by an employer: EMPLOY . . . **syn** see WAGE.

Id. at 853-54.

Definitions from other jurisdictions can also aid and instruct on the meaning of a term, although such definitions are neither conclusive nor compulsory. *See City of Davenport v. PERB*, 264 N.W.2d 307, 313 (Iowa 1978) (citing *Cassady v. Wheeler*, 224 N.W.2d 649, 652 (Iowa 1974)). The New York legislature, in at least one statutory provision, has stated that “the term ‘benefits or wage supplements’ includes, but is not limited to, reimbursement for expenses; health, welfare and retirement benefits; and vacation, separation or holiday pay.” N.Y. Labor Law § 198-c (2008) (preempted by *People v. Saxton*, 75 N.Y.S.2d 316 (N.Y. App. Div. 2010)). New Jersey has enacted a provision which directs that certain employees receive “supplemental compensation” for unused, accumulated sick leave at retirement. N.J. Stat. Ann. § 11A:6-16 (2011). Ohio specifically lists those items considered “pay supplements” under its law, including longevity pay, hazardous salary adjustment, bilingual pay, shift differential, pay for temporary occupancy of higher level position, professional achievement pay, advanced degree pay, and merit pay. Ohio Rev. Code Ann. § 124.181 (West 2011).

The United States Internal Revenue Service has also defined “supplemental wages.” Its definition provides that “[s]upplemental wages are

all wages paid by an employer that are not regular wages.” 26 C.F.R. § 31.3402(g)—1(a) (2012). The treasury regulation offers several examples of “supplemental wages,” including overtime pay, bonuses, expense reimbursement or reimbursement allowances, non-cash fringe benefits, sick pay, and health coverage. *Id.*

The dictionaries’ and other jurisdictions’ definitions suggest that the common and ordinary meaning of “supplemental pay” is broad enough to encompass every benefit and salary adjustment over and above an employee’s base wage, including items such as insurance, holidays, shift differentials, and overtime compensation. However, in the context of section 20.9, this cannot be the case. The definition of one section 20.9 term cannot render another redundant. *Waterloo II*, 740 N.W.2d at 430. Thus, “supplemental pay” cannot be defined in a way which consumes other section 20.9 terms (*e.g.* insurance, holidays, shift differentials, overtime compensation) or allows it to become superfluous with another term (*e.g.* wages). Moreover, PERB has rejected the notion that a proposal can properly be classified as being within more than one section 20.9 subject category due to the need for section 20.22 arbitrators to make their selections on an “impasse item” (*i.e.* section 20.9 topic) basis. *See, e.g., Michelstetter & Henry County & PPME*, No. 8242, slip op. at 6-7 (PERB May 13, 2010). Thus, a proposal which falls within the scope of one of the other section 20.9 topics (*e.g.* insurance, holidays, shift differentials, overtime compensation) cannot also be mandatory under “supplemental pay.”

The dictionaries' definitions also suggest that "supplemental pay" is not limited to cash payments, but also embraces other things of value an employee might receive from an employer. *Black's Law Dictionary* explicitly provides that "payment" might come in the form of a "valuable thing." *Black's Law Dictionary* at 1480. The remaining dictionary definitions do not limit "supplement" or "pay" to cash. Nor does anything in section 20.9 suggest "supplemental pay" should be restricted to cash. Thus, the common and ordinary meaning of "supplemental pay" in the context of section 20.9 includes both cash payments and other things of value.

Additionally, when examining the context of section 20.9, it becomes evident that the legislature intended "supplemental pay" be related to the employment relationship. *Cf. Area IV Cmty. Coll. Educ. Ass'n & Merged Area IV Sch. Dist.*, Nos. 663 & 674, slip op. at 4 (PERB Apr. 9, 1976) (stating insurance proposal mandatory under insurance because it reasonably related to the employment relationship) & *Area I Vocational-Technical Sch. Dist. & Area I Higher Educ. Ass'n*, No. 650, slip op. at 2 (PERB Mar. 31, 1976) (same). There can be no question that chapter 20 deals strictly with collective bargaining in the public sector in Iowa; thus, in the context of section 20.9, any "supplemental pay" proposal must be related to the employment relationship between bargaining unit members and the public employer.

With all these considerations in mind and following the Supreme Court's directive to define the section 20.9 terms using their common and ordinary meaning within the structural parameters of the section, the Board defines

“supplemental pay” as a payment of money or other thing of value that is in addition to compensation received under another section 20.9 topic and is related to the employment relationship. The Board believes this definition most closely resembles the common and ordinary meaning of the term within the confines of section 20.9. It requires a tie to the employment relationship and gives “supplemental pay” a common and ordinary definition that is narrowed “in order to avoid an interpretation that renders subsequent items in the laundry list redundant and meaningless.” *Waterloo II*, 740 N.W.2d at 429.

B. Application

Applying the threshold topics test, the Board concludes the proposals at issue here fall within the definition of “supplemental pay.” The proposals each seek to provide for a cash payment not otherwise covered by another form of compensation set forth in section 20.9. They are related to the employment relationship in that the payment is made upon termination, is conditioned upon length of service, and is calculated based on unused, accumulated sick leave. Moreover, the proposals incentivize employees to remain in the District’s employ while refraining from using their contractually agreed-to sick leave. Thus, the proposals address a payment of cash or other thing of value which is in addition to an employee’s other compensation and is related to the employment relationship. Neither party has argued, nor does the Board conclude, that the proposals are preempted or inconsistent with any other provision of law. They are, therefore, mandatory subjects of bargaining under “supplemental pay.”

The Board recognizes this definition and its application are a significant shift from 30-plus years of precedent that may impact future negotiations between public employers and bargaining units. However, the impact on future negotiations must be the parties' concerns, not PERB's, because that impact relates to the *merits* of proposals, not to their negotiability. The Board has no duty or right to judge the merits of a proposal. *See Waterloo II*, 740 N.W.2d at 431 (citing *Charles City CSD*, 275 N.W.2d at 769). Rather, it is up to the parties through negotiations, or arbitrators in impasse proceedings, to adjudge whether any given proposal should be included in a collective bargaining agreement. *Id.* PERB's role must continue to be limited to judgments on the *negotiability* of the proposals.

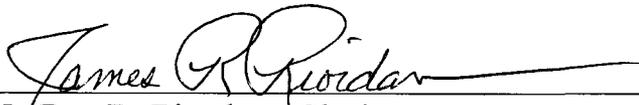
The Board's ruling also does not compel inclusion of the proposals in a collective bargaining agreement. Section 20.9 only requires that the parties negotiate mandatory topics in good faith; this obligation "does not compel either party to agree to a proposal or make a concession." Iowa Code § 20.9. The Board's determination that the severance pay proposals are subject to mandatory bargaining only reflects the legislature and the Court's chosen process of resolving employer-employee disputes involving "supplemental pay." *See Waterloo II*, 740 N.W.2d at 431.

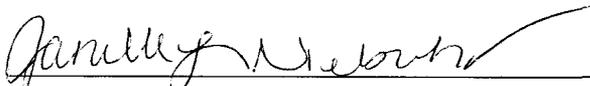
IV. CONCLUSION

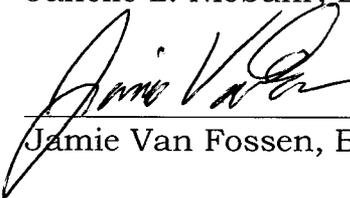
For the reasons discussed above, the Board concludes the severance pay proposals at issue in this case are mandatory subjects of bargaining.

DATED at Des Moines, Iowa, this 2nd day of July, 2012.

PUBLIC EMPLOYMENT RELATIONS BOARD

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