

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF:)
)
SCOTT COUNTY, IOWA,)
 Petitioner/Public Employer,)
)
And)
)
SCOTT COUNTY CORRECTIONS AND)
COMMUNICATIONS ASSOCIATION/)
TEAMSTERS LOCAL NO. 238,)
 Intervenor/Employee Organization.)

Case No. 8541

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PUBLIC EMPLOYMENT
RELATIONS BOARD

DECLARATORY ORDER

This matter comes before the Public Employment Relations Board (the Board or PERB) upon Scott County, Iowa's (the County) petition for a declaratory order filed on July 6, 2012. The Board subsequently granted the petition for intervention of Scott County Corrections and Communications Association/Teamsters Local No. 238 (the Union). Counsel for the parties¹, on behalf of their respective clients, submitted briefs addressing the questions presented.

Iowa Code subsection 17A.9(2) requires agencies to adopt rules providing for the form, contents, and filing of petitions for declaratory orders, and for their prompt disposition. Accordingly, PERB adopted chapter 10 of its rules, which governs declaratory order proceedings before this agency. No evidentiary hearings or factual determinations are made in such proceedings – instead,

¹ James Hanks for the County and Jill Hartley for the Union.

any declaratory order issued is based solely upon the facts specified in the petition.

The County's petition sets out a number of purported facts, representing that the County and the Union are parties to a collective bargaining agreement (CBA) effective from July 1, 2012, to June 30, 2013. The Union is the certified employee organization for a bargaining unit consisting of correctional officers and certain other employees who work in the County jail. During negotiations for the CBA, the parties disputed whether the County had the right to assign or determine the specific schedule of days of the week that a bargaining unit employee may be required to work.

The current CBA includes the following provision:

Section 2.9 Shift Bidding Procedure for Correction Officers.

A. Semi-Annual Shift Bidding. The following procedure shall apply only to employees covered by the terms of this agreement and have successfully completed their probationary period.

For the purpose of this section, a shift assignment includes the regular hours of work and the regular days off as designated as "male", "female", or "either". Assignments may only be designated as "male" or "female" in order to comply with legal requirements or mandates. All other assignments shall be designated as either. It is understood that a shift assignment does not include an employee's post assignment (e.g., booking, main control room, support services, etc.). Post assignments shall be made at the sole discretion of the Employer.

On or about January 1 and July 1 of each year, the Employer shall post a list of all shift assignments to be bid. Employees shall have seven (7) calendar days to designate their choice of shift assignment. In the case

of a conflict between designated choices, seniority shall govern such assignments. The Employer shall notify all officers of their shift assignment seven (7) calendar days after all bids have been submitted. New shift assignments shall become effective on the first pay period of March and September of each year.

The CBA does not contain a side letter relating to hours of work. The County and the Union have negotiated regarding the scheduling of shifts², but have disagreed with regard to the extent of the right of the County to make shift assignments. The Union does not dispute any of the facts set forth in the County's petition.

The County's petition poses two specific questions:

- (1) Whether subsection 2.9(A) of the parties' current contract, as set forth above, is a mandatory subject of bargaining;
- (2) Whether the County has the exclusive right to assign or determine the specific schedule of days of the week that a bargaining unit employee may be required to work.

QUESTION 1

A. *Scope of Bargaining Principles*

Although raised in the context of a declaratory order proceeding, question 1 is precisely the type which typically comes before PERB in proceedings for the expedited resolution of disputes concerning the Iowa Code section 20.9 negotiability status of proposals made during the course of

² Based upon the context of the statements as pled in the petition, the Board assumes "scheduling of shifts" means the beginning and ending times of the shifts.

collective bargaining. See Iowa Admin. Code r. 621—6.3. The analysis applied in negotiability cases is, thus, applicable here.

Subjects of bargaining are divided into three categories: (1) mandatory subjects listed in section 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 contract provision) is a mandatory subject under section 20.9. *Waterloo Educ. Ass’n v. PERB*, 740 N.W.2d 418, 429 (Iowa 2007) (hereinafter “*Waterloo II*”); *State v. PERB*, 508 N.W.2d 668, 672 (Iowa 1993). First, the proposal must come within the meaning of a section 20.9 mandatory bargaining subject. Second, the proposal must not be illegal. *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 Cmty. Sch. Dist.*, 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 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 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 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 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.

Early Supreme Court cases espoused giving a narrow and restrictive meaning to the section 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). However, the Court in 2007 rejected the narrow and restrictive approach and clarified that the section 20.9 mandatory topics are to be given their common and ordinary meanings, rather than their narrowest possible interpretations. *Waterloo II*, 740 N.W.2d at 429-30. They cannot, however, be interpreted so expansively that other mandatory topics become redundant. *Id.*

B. Application of Principles

As a matter of first course, the Board must determine the predominant characteristic, topic, or purpose of subsection 2.9(A) of the parties' CBA. A reading of the provision reveals that its predominant purpose is to establish a procedure for shift assignments.

Next, the Board must determine whether employee shift assignments fall under within the common and ordinary meaning of one of the section 20.9 mandatory bargaining subjects. The parties' arguments focus on two of the section 20.9 topics: (1) seniority and (2) hours. The Board will limit its discussion likewise.

Although *Waterloo II* directs the Board to use the common and ordinary meaning of "seniority" and "hours" rather than their narrowest possible interpretations, they cannot be interpreted so expansively that other section 20.9 topics become redundant and meaningless. 740 N.W.2d at 429. With this directive in mind, it is prudent for the Board to begin by examining the prior meanings of "seniority" and "hours" to determine if they were "narrow and restrictive" and whether the Court's *Waterloo II* directive to use the common and ordinary meaning of the section 20.9 topics somehow alters those holdings. In short, the Board thinks *Waterloo II* does not affect the outcome in this matter.

In 1983, the Iowa Supreme Court decided *Saydel Educ. Ass'n v. PERB*, 333 N.W.2d 486. The Court, in discussing whether criteria other than seniority may be considered in connection with transfer or staff reduction procedures, stated that "seniority" has a meaning apart from those procedures. *Id.* at 489. Questions of "when seniority begins and whether it will be determined on a building-wide, departmental or classification basis" might well arise, triggering mandatory negotiation of "seniority" issues. *Id.* In this decision, the Court recognized the need to define "seniority" in such a way as to

avoid redundancy with other terms in the laundry list and limited its definition accordingly.

In subsequent matters, PERB continued along this thread. Although references to a “narrow construction” or “narrow view” are found, it is apparent that the main focus in defining “seniority” was to avoid rendering the topic superfluous in light of the other section 20.9 subjects. The Board thinks the common and ordinary meaning of “seniority” in the context of chapter 20 continues to be that as set forth in *Amalgamated Transit Union Division 329 and City of Dubuque*, Case No. 6828, at p. 6 (PERB Dec. 30, 2004):

[T]he term “seniority” in section 20.9 refers to matters concerning the calculation of seniority, eligibility for accrual of seniority, and record-keeping concerning employee seniority. Such matters would include when an employee’s seniority commences, how seniority is determined when employees share the same date of hire, the effect on an employee’s seniority of leaves of absence or breaks in service, whether seniority is employer-wide or determined in separate divisions, whether part-time, temporary, probationary, and/or full-time employees accrue seniority, access to updated seniority lists, and the like.

Applying this definition to subsection 2.9(A) of the parties’ CBA, the content of the provision does not fall under the umbrella of “seniority.” 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.

The Board now turns to whether subsection 2.9(A) is mandatory under “hours.” There has been little disagreement that “hours” covers the total hours

to be included in a workday, the starting and quitting times, and break times. Parties have generally agreed, and PERB has held, that those matters are mandatory under "hours." See, e.g., *Andrew Cmty. Sch. Dist. & Andrew Educ. Ass'n*, Case No. 2629 (PERB Jun. 15, 1984); *Western Dubuque Cmty. Sch. Dist. & Western Dubuque Educ. Ass'n.*, Case Nos. 1393 & 1394 (PERB Jan. 2, 1979); *Sergeant Bluff-Luton Educ. Ass'n. & Seargeant Bluff-Luton Cmty. Sch. Dist.*, Case No. 715 (PERB Oct. 4, 1976). Disputes have typically arisen over what assignments may be given to employees.

"Hours of work" has been defined as:

A general phrase which applies to the many problems relating to the time that a person spends at work. This includes the efforts of unions to reduce the number of hours of work. It also applies to the host of problems in the plant relating to the scheduling of work, the problems of starting and finishing time, rest and meal periods, clean-up time, etc. Most collective bargaining agreements incorporate detailed language concerning hours of work, particularly in relation to the payment of overtime.

Roberts Dictionary of Industrial Relations 189 (Rev'd ed. 1971).

In *Black Hawk County and Public Professional and Maintenance Employees, Local 2003*, Case No. 7218 (PERB Apr. 6, 2006), the Board made clear that proposals which predominantly deal with assignment and staffing were not mandatory under "hours." The Board recognized that a shift assignment does have an impact on an individual employee's hours, but distinguished between the employer's right to assign an employee to a shift versus the employee's right to be notified of his or her hours of work. The

Board thinks this view, which recognizes the distinction between the total hours of work, starting and finishing times, and rest and meal periods on the one hand, and the assignment of employees to the negotiated “schedule” on the other, reflects the common and ordinary meaning of “hours” in the context of section 20.9.

Subsection 2.9(A) of the parties’ collective bargaining agreement does not actually set the hours of work, break times, etc. Nor does it govern how and when an employee shall be notified of his or her assigned shift. Rather it provides for how and when employees will be assigned to shifts by the employer. It is thus not mandatory under “hours.”

For these reasons, subsection 2.9(A) of the parties’ CBA is not a mandatory subject of bargaining, and the answer to question 1 of the County’s petition is “no.”

QUESTION 2

As noted in the discussion of question 1 above, the County has an obligation to bargain the total number of hours of the workday, starting and quitting times and break times—all matters within the common and ordinary meaning of the section 20.9 topic of “hours.” But the employer retains the authority to assign employees to the “schedule” resulting from mandatory bargaining because the assignment of employees to particular tasks or shifts is not within the meaning of that or any other section 20.9 topic.

Question 2 addresses and seemingly combines these distinct concepts and, while couched as a question of management rights under section 20.7,

asks the Board to determine the negotiability of scheduling as a general concept without providing either factual context or an actual bargaining proposal or contract language upon which the Board is to base its ruling.

Paragraph (f) of PERB subrule 621—10.9(1) contemplates the Board’s refusal to issue a declaratory order where “[t]he facts or questions presented in the petition are unclear, overbroad, insufficient or otherwise inappropriate as a basis upon which to issue a declaratory order.” This ground is fully applicable to question 2. The Board has previously declined to issue a declaratory order concerning the negotiability of broad “issues” where no specific bargaining proposal or contract language is provided, on the basis that such questions are too vague to permit a reasoned negotiability analysis. *City of Waterloo & Teamsters No. 238*, Case No. 5067 (PERB Mar. 25, 1994). The same principle applies to question 2, which is unclear and overbroad in nature and inappropriate for the Board’s consideration in the context of a declaratory order proceeding.

Although other subrule 621—10.9(1) reasons for declining to issue a declaratory order in this case may also be present, the Board finds it unnecessary to consider the application of additional grounds where, as here, an ample reason militating against the issuance of a declaratory order is already apparent.

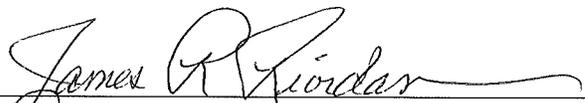
Consequently, the Board declines to issue a declaratory order on question 2 as requested by the County’s petition.

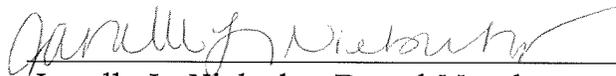
CONCLUSION

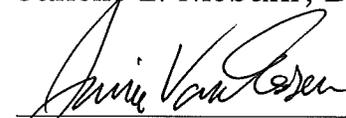
For the reasons stated above, the Board answers question 1 in the negative, concluding subsection 2.9(A) of the parties' collective bargaining agreement is not a mandatory subject of bargaining, and declines to issue a declaratory order on question 2.

DATED at Des Moines, Iowa, this 21st day of November, 2012.

PUBLIC EMPLOYMENT RELATIONS BOARD

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