

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF:)

CEDAR FALLS COMMUNITY)
SCHOOL DISTRICT,)
Public Employer,)

Case No. 8627

and)

CEDAR FALLS EDUCATION ASSOCIATION,)
Certified Employee Organization.)

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RULING ON NEGOTIABILITY DISPUTE

On March 13, 2013, the Cedar Falls Community School District (District) filed a petition for expedited resolution of negotiability dispute with the Public Employment Relations Board (PERB or Board) pursuant to PERB rule 621—6.3, seeking a ruling on whether language contained in a contract proposal offered by the Cedar Falls Education Association (Association) during the course of collective bargaining with the District is a mandatory subject of bargaining under Iowa Code section 20.9 (2013). No oral arguments were heard, however, both parties¹ submitted briefs.

On April 3, 2013, the Board issued a preliminary ruling on the negotiability petition, finding that the underlined language in the proposal set forth below is a mandatory subject of bargaining. The District subsequently filed a timely request for a final ruling.

The proposal² reads as follows:

¹ James Hanks for the District and Christy Hickman for the Association.

² The District requested a ruling on the underlined language of the proposal only and provided the remaining portion for context.

ARTICLE 12 -HOURS

(12.1) The official standard teaching day i.e. work day shall consist of seven (7) hour [sic] and fifty (50) minutes and shall include a scheduled lunch period of at least thirty (30) minutes. Employees shall report to duty at least thirty (30) minutes prior to the beginning of the pupils' school day, and shall remain at their places of assignment, as determined by the principal, for at least thirty (30) minutes after the close of the pupils' school day. On Fridays and days immediately preceding a holiday or vacation, employees may depart their buildings fifteen (15) minutes prior to the end of the standard work day.

When determining the negotiability status of a proposal, the Board uses the two-pronged approach set forth in *State v. PERB*, 508 N.W.2d 668 (Iowa 1993) (hereinafter *State*), and *Northeast Community School District v. PERB*, 408 N.W.2d 46 (Iowa 1987), and endorsed in *Waterloo Education Association v. PERB*, 740 N.W.2d 418 (Iowa 2007) (hereinafter *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 Iowa Code 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. *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.*

Here, the Association urges the Board to conclude the underlined language is mandatory under the section 20.9 topic of "hours." The District, on the other hand, appears to argue that the underlined language of the

proposal does not fit within the scope of any term listed in section 20.9. In the alternative, the District argues that this language presents the unusual case where a balancing-type analysis is warranted and that the scale tips in favor of the District when balancing employer and employee rights.

In the Board's opinion, this is not a case where the predominant purpose of the proposal (or here, the underlined language) cannot be readily determined. The predominant purpose of the language is apparent: establishing the starting and ending times of the employees' work day. On its face, the underlined language sets the arrival and dismissal times. *See State*, 508 N.W.2d at 673 (Iowa 1993) (“[The] only task is to determine whether the proposal, *on its face*, fits within a definitionally fixed section 20.9 mandatory bargaining subject.”) (emphasis in original); *see, also, Waterloo II*, 740 N.W.2d at 429 (negotiability determination “is an issue of law based upon a facial review of the proposal”) (citations omitted). In this case, the arrival and dismissal times are set in relation to the pupils' school day.

The essence of the District's argument is that the underlined language impinges on its right to determine the length of the school day and its right to direct employees' work, and requests that the Board engage in a balancing-type analysis. The fatal flaw with this argument is that the predominant purpose of the underlined language is apparent on its face. The Board may only utilize a balancing-type analysis when the predominant purpose of the proposal (or

here, the underlined language) cannot be readily determined. *Waterloo II*, 740 N.W.2d at 429.³

The District also makes much of the effect of the language when read in the context of the entire proposal. The effect, the District argues, is to establish the length of the pupils' school day, a right purportedly within the sole discretion of the District. The underlined language in no way sets the pupils' school day.

The District also argues that the underlined language impermissibly limits the District's right to direct the work of its employees. The extent of a proposal's limitation on management rights is of no consequence to the negotiability analysis. *Id.* at 428; see, also, *State of Iowa (Dep't of Admin. Servs.) & AFSCME Iowa Council 61*, Case No. 8604, at p. 13 (PERB Feb. 8, 2013) (refusing to accept an argument that one potential consequence of the proposal made it permissive) and *Sergeant Bluff-Luton Educ. Ass'n & Sergeant Bluff-Luton Cmty. Sch. Dist.*, Case No. 715, at pp. 3-5 (PERB Oct. 4, 1976) (concluding that concerns regarding a proposal which might limit the employer's operating hours relates to the merits of the proposal, not its negotiability). Instead, the Board looks only at the proposal's subject matter.

³ The Court explained that every section 20.9 mandatory topic infringes upon employer rights and that "[i]f the test of negotiability were truly a simple infringement test, literally nothing would be subject to mandatory collective bargaining." *Waterloo II*, 740 N.W.2d at 428 (citations omitted). It also stated that the legislature had already balanced management and employee rights when it adopted the "laundry list" of mandatory topics in section 20.9 in lieu of the National Labor Relations Act's more general language. *Id.* at 429. Thus, further balancing of management and employee rights is unnecessary and inappropriate unless the predominant purpose of the proposal is not apparent on its face.

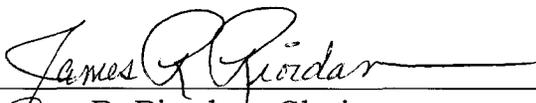
Charles City Cmty. Sch. Dist. v. PERB, 275 N.W.2d 766, 769 (Iowa 1979). And here, the subject is the starting and ending times of the employees' work day.

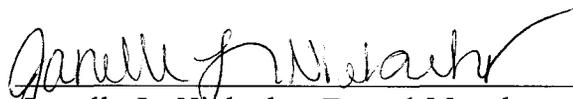
The Board has consistently held that the starting and ending times of the work day fall within the mandatory topic of "hours." See, e.g., *Pub. Prof'l & Maint. Employees, Local 2003 & Black Hawk County*, Case No. 7012, at p. 6 (PERB Feb. 1, 2006); *Ne. Cmty. Sch. Dist. & Ne. Cmty. Educ. Ass'n*, Case No. 2414, at pp. 19-20 (PERB Jun. 17, 1983); *Sergeant Bluff-Luton Educ. Ass'n*, Case No. 715, at pp. 3-5. In its brief, the District concedes as much. Because the predominant purpose of the underlined language of the proposal is establishing the starting and ending times of the employees' work day, it falls within the section 20.9 mandatory topic of "hours."

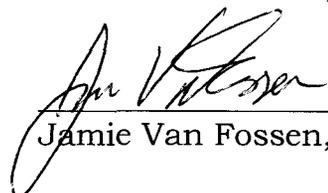
Neither party argues the language at issue is illegal, preempted, or inconsistent with another provision of law. Thus, the underlined language in the proposal set forth above is a mandatory subject of bargaining.

DATED at Des Moines, Iowa, this 24th day of April, 2013.

PUBLIC EMPLOYMENT RELATIONS BOARD

By: 
James R. Riordan, Chair


Janelle L. Niebuhr, Board Member


Jamie Van Fossen, Board Member

Email and mail copies to:

James C. Hanks
Ahlers & Cooney, PC
100 Court Ave, Ste 600
Des Moines, IA 50309
jhanks@ahlerslaw.com

Christy A.A. Hickman
777 Third St
Des Moines, IA 50309
chickman@isea.org