

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

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INTERNATIONAL ASSOCIATION OF )  
PROFESSIONAL FIREFIGHTERS, LOCAL 2607, )  
Complainant/Employee Organization, )  
and )  
CEDAR RAPIDS AIRPORT COMMISSION, )  
Respondent/Public Employer. )

Case No. 8637

PUBLIC EMPLOYMENT  
RELATIONS BOARD

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**DECISION AND ORDER**

Complainant International Association of Professional Firefighters, Local 2607 (Local 2607) filed this prohibited practice complaint with the Public Employment Relations Board (PERB or Board) pursuant to Iowa Code section 20.11 and PERB rule 621—3.1(20). Local 2607’s complaint alleged that Respondent Cedar Rapids Airport Commission (Commission) committed prohibited practices within the meaning of Iowa Code sections 20.10(1) and 20.10(2)(a), (e), (f), and (g). The complaint alleged these prohibited practices occurred throughout the bargaining process and specifically, by the Commission presenting a dramatically new proposal for the first time at mediation, delaying bargaining, refusing to meet, and cancelling sessions.

The Board denied a motion to consolidate this case with Case No. 8645, but agreed to expedite the matter. Pursuant to notice, the Board held an evidentiary hearing on Local 2607’s claims in Des Moines, Iowa,<sup>1</sup> on May 28, 2013. Local 2607 was represented by Charles E. Gribble and the Commission

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<sup>1</sup> The parties waived the venue provision of Iowa Code section 20.11(1).

by James Hanks. Both parties submitted post-hearing briefs, the last of which was filed on June 7, 2013.

Based upon the entirety of the record, and having considered the parties' arguments, the Board concludes that Local 2607 has failed to establish that the Commission committed prohibited practices and makes the following:

#### FINDINGS OF FACT

The facts in this case are largely undisputed. The Commission is a public employer within the meaning of Iowa Code section 20.3(10),<sup>2</sup> and Local 2607 is an employee organization within the meaning of section 20.3(4). Local 2607 has been certified as the exclusive collective bargaining representative for certain employees of the Commission. The Commission and Local 2607 have been parties to a continuous series of collective bargaining agreements negotiated pursuant to the provisions of the Public Employment Relations Act (PERA) since 1977. At the time of the hearing, their then-current agreement was effective from July 1, 2010, through June 30, 2013.

The Commission, created by the City of Cedar Rapids pursuant to Iowa Code chapter 330, operates the Eastern Iowa Airport (Airport) in Cedar Rapids, Iowa. The Airport is a commercial airport, and its commercial airport operations are regulated by the Federal Aviation Administration (FAA). FAA regulations prescribe the minimum hours of operation of a commercial airport, and the regulations require that a commercial airport maintain a staff to operate the airport beginning fifteen minutes prior to the first scheduled takeoff

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<sup>2</sup> This and all subsequent statutory citations are to the 2013 Iowa Code.

or landing of a commercial airplane and continuing until fifteen minutes after the last scheduled takeoff or landing of a commercial airplane. Unless otherwise dictated by the scheduled flights of the Airport, FAA regulations do not require a commercial airport to operate for 24 consecutive hours in a day. No state statutes or regulations require a commercial airport to operate for 24 consecutive hours in a day.<sup>3</sup>

The bargaining unit represented by Local 2607 is composed of the Airport's public safety officers. Since its inception, approximately 12-13 individuals are in the unit at any given time. The unit currently has 12 members. As public safety officers, the members serve several functions at the Airport: firefighting and first response duties for emergencies at the Airport; law enforcement and security services at the Airport; and other Airport operations services such as communicating with other airports regarding flights when the flight tower is closed, responding to passengers in need of assistance at the Airport and on Airport grounds, and monitoring the weather and airfield conditions to ensure safe operations for aircraft. The unit has performed these duties, or substantially similar ones, since its formation.

From 1977 to present, the Airport's commercial airport terminal has been open and accessible to passengers 24 hours per day, seven days per week, and the bargaining unit employees have been on duty 24 hours per day,

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<sup>3</sup> The Airport is one of eight commercial airports located in the State of Iowa that is regulated by the FAA. Only two of those airports – the Eastern Iowa Airport and the Des Moines International Airport – operated on a 24 hour basis at the time of the hearing.

seven days per week. Commercial airline flights are scheduled to depart and arrive between 6:45 a.m. and 11:59 p.m.

In addition to commercial flights, general aviation, small non-commercial flights, and shipping companies<sup>4</sup> (collectively, “non-commercial functions”) can take off and land at the Airport 24 hours per day. The parties presented no evidence that the FAA or any other agency regulates the operation of general aviation, small non-commercial, or shipping companies’ flights. Bargaining unit employees have performed duties overnight, such as security patrols, communications with general aviation aircraft, and monitoring runway conditions, that relate directly to the Airport’s non-commercial functions.

Prior to 2008, the unit employees’ individual work schedules consisted of four 10-hour shifts per week with staggered starting times. The parties formulated the master schedule to provide 24 hour coverage by bargaining unit employees.

In 2008, the parties agreed to a mid-term contract modification that altered the unit employees’ individual work schedules to provide for shifts of 24 continuous hours followed by 72 hours off work. This resulted in a master schedule where the bargaining unit was divided into four 24 hour shifts with three employees working each shift. This master schedule, referred to as the 24/72 schedule, was in use at the time of hearing.

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<sup>4</sup> Examples include FedEx, UPS, and the United States Postal Service.

Nonetheless, the parties' collective bargaining agreement continues to set forth the pre-2008 hours of work language in the body of the contract. Article 5, paragraph 7 provides:

Nothing herein shall be construed as a guarantee of the number of hours of work per day or per week or of the number of days of work per week. However, the normal workday of ten (10) hours and two (2) weeks of eighty (80) hours will generally be followed except when budgeting limitations or operational requirements would, at the discretion of the Employer, require otherwise.

The 24/72 schedule is formalized in a memorandum of agreement (MOA) attached to the collective bargaining agreement. The parties have made no substantive changes to the MOA since its adoption in 2008. The bargaining unit's 24-hour coverage of the Airport's commercial airport is reflected in its Emergency Plan approved by the FAA and the Airport Security Plan approved by Transportation Security Administration (TSA).

On July 1, 2010, Tim Bradshaw began employment with the Commission as the executive director of the Airport. Bradshaw is a 30-year veteran of the air transportation industry and has worked at several airports across the country in various roles. After beginning employment at the Airport, Bradshaw reviewed the parties' collective bargaining agreement and immediately became concerned about the 24/72 schedule. He was not aware of any other commercial airport whose public safety employees worked on a 24/72 schedule. Bradshaw believed the 24/72 schedule did not provide adequate coverage of the Airport's commercial airport operations during its peak times.

He communicated his concerns to the bargaining unit and members of the Commission.

In addition to his position as executive director, Bradshaw was also designated as the Commission's lead negotiator for collective bargaining with Local 2607. While Bradshaw had negotiated several contracts in his prior positions at other airports, he had never bargained a labor contract, and more importantly, a labor contract entered into pursuant to Iowa Code chapter 20. In preparation for bargaining, Bradshaw met with the Commission's labor and personnel committee, and together, they outlined the goals of bargaining prior to its start. Those goals included altering the work schedule of the bargaining unit employees to provide for increased coverage during peak hours. Bradshaw testified that one option discussed during these sessions included a reduction of hours of operation of the commercial airport (*i.e.* when the airport terminal would be open to the general public), but the Commission did not decide to reduce operational hours at that time.<sup>5</sup>

At some point before November 2012, Local 2607 requested negotiations for a successor agreement. Bradshaw did not fully understand the applicable timelines and initially sought to delay exchanging initial proposals until 2013. Bradshaw later learned of the statutory timelines, and the parties ultimately exchanged their initial proposals in November 2012.

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<sup>5</sup> Based upon the context of the evidence, the Board finds that the "hours of operation" discussed throughout these proceedings were those of the commercial airport and not the hours of operation of the Airport's non-commercial functions. Where discussing "hours of operation" or "operational hours" of the Airport herein, the Board is referring to the commercial airport's hours of operation unless otherwise noted.

Local 2607 first presented its initial proposal with a summary of proposed changes. The summary referred to the hours of work provision contained in Article 5, Section 7 and stated:

Delete second sentence of existing paragraph and replace with: "The basic schedule for Airport Public Safety personnel shall be 24 hours on duty followed by 72 hours off duty with reporting time of 7:00 a.m., except when budgeting limitations or operational requirements would [sic]."

The summary also referred to the MOA and stated: "Eliminate through incorporation of language into contract."

In its initial proposal, the Commission proposed to delete all references to the 24/72 schedule in the MOA. The effect of the Commission's initial proposal was to reinstitute Article 5, Section 7 of the collective bargaining agreement, quoted above. The proposal did not mention reducing hours of operation. Local 2607 assumed that, if the Commission's proposal was adopted, the bargaining unit would still provide 24-hour coverage even though the contract was silent on the Airport's operational hours.

The parties agreed to next meet in February 2013. This delay was not uncommon; the parties had a history of waiting to negotiate until other larger bargaining units, such as the Cedar Rapids Fire Fighters, had settled. At the February session, the parties' most significant issue was hours of work. The Commission suggested a work schedule consisting of 24 hours on duty followed by 48 hours off duty.<sup>6</sup> Local 2607 maintained its position and rejected

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<sup>6</sup> There is some dispute about whether the Commission made a formal proposal outlining the 24 hours on/48 hours off schedule. Regardless, this schedule was at least discussed during the February 2013 negotiating session.

any change to the current 24/72 schedule. The Commission did not discuss the possibility of reducing the Airport's hours of operation to 20 hours per day as that decision had not yet been made. The parties agreed to continue bargaining on April 11, 2013, with a negotiation session in the morning followed by mediation.

At some point between the February 2013 negotiation session and April 11, 2013, the Commission decided to reduce the Airport's hours of operation from 24 hours per day to 20 hours per day, effective July 1, 2013.

On the morning of April 11, 2013, the Commission requested that the parties proceed directly to mediation. Bradshaw and the Commission felt that negotiations would be unfruitful because Local 2607 had not moved from its initial hours of work proposal. The Commission believed the assistance of a third-party neutral would be preferable. The parties then began mediation, exchanging several proposals with the help of a mediator.

One of the proposals made by the Commission outlined a master work schedule comprised of 10-hour shifts with staggered starting times. The written outline of the proposed work schedule revealed that the effect of the proposal was that bargaining unit employees would collectively provide coverage of the Airport for only 20 hours per day. The Commission, through the mediator, provided its proposed schedule, breaking down the shifts' starting and ending times and the number of unit employees on each shift. Through this proposal, the Commission informed Local 2607 of the planned reduction of the Airport's hours of operation for the first time. The Commission

explained to Local 2607 that its position was that it had the exclusive statutory right to determine the number of hours of its operation and that, effective July 1, 2013, the hours of operation of the Airport would be changed from the current 24 hours per day to 20 hours per day. The parties did not reach an agreement at mediation.

On April 15, 2013, counsel for the Commission sent a letter to Local 2607's counsel reiterating the Commission's position on hours of operation. The letter again states that hours of operation will be reduced to 20 hours per day effective July 1, 2013, and repeats the Commission's position that it has the exclusive right to determine the number of hours of operation while acknowledging that it has a duty to negotiate with Local 2607 regarding the scheduling of the hours that will be worked by bargaining unit employees. The letter asks that Local 2607 respond to its position and states that if Local 2607 disagrees, the Commission would seek a ruling from PERB. The letter also states the Commission's view that proposals submitted during arbitration which provide for coverage in excess of 20 hours per day would be improper and that the Commission would challenge any such proposal by way of a prohibited practice complaint.

During the course of negotiations, the parties agreed to several provisions unrelated to the "hours" dispute. The Commission also agreed to an extension of the bargaining/impasse proceedings deadline to July 1, 2013. Bradshaw stated on the record at hearing that the Commission would agree to further extend the deadline until all proceedings were completed.

## CONCLUSIONS OF LAW

In prohibited practice proceedings, the complainant bears the burden of establishing each element of the charge. *See, e.g., AFSCME/Iowa Council 61*, 11 PERB 8146, at 9 (Feb. 2, 2011); *Broadlawns Medical Center*, 05 PERB 6894, at 5 (Apr. 6, 2005); *Tama County*, 05 PERB 6756, at 6 (Apr. 22, 2005). Here, Local 2607 alleges that the Commission committed prohibited practices within the meaning of Iowa Code sections 20.10(1) and 20.10(2)(a), (e), (f), and (g). Those sections provide:

### **20.10 Prohibited Practices.**

1. It shall be a prohibited practice for any public employer, public employee, or employee organization to refuse to negotiate in good faith with respect to the scope of negotiations as defined in section 20.9.

2. It shall be a prohibited practice for a public employer or the employer's designated representative to:

*a.* Interfere with, restrain or coerce public employees in the exercise of rights granted by this chapter.

\* \* \*

*e.* Refuse to negotiate collectively with representatives of certified employee organizations as required in this chapter.

*f.* Deny the rights accompanying certification granted in this chapter.

*g.* Refuse to participate in good faith in any agreed upon impasse procedures or those set forth in this chapter.<sup>7</sup>

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<sup>7</sup> Contrary to the Commission's contention, Local 2607 need not establish that the alleged prohibited practice was done willfully. Through a statutory amendment effective July 1, 2010, "willfulness" is no longer an element required to establish a prohibited practice.

Also central to this matter are Iowa Code sections 20.9 and 20.17(3), which provide, in relevant part:

**20.9 Scope of Negotiations.**

The public employer and the employee organization shall meet at reasonable times, including meetings reasonably in advance of the public employer's budget-making process, to negotiate in good faith with respect to . . . hours . . . and other matters mutually agreed upon. . . .

**20.17 Procedures.**

\* \* \*

3. Negotiating sessions, strategy meetings of public employers, mediation, and the deliberative process of arbitrators shall be exempt from the provisions of chapter 21. However, the employee organization shall present its initial bargaining position to the public employer at the first bargaining session. The public employer shall present its initial bargaining position to the employee organization at the second bargaining session, which shall be held no later than two weeks following the first bargaining session. Both sessions shall be open to the public and subject to the provisions of chapter 21. . . .

I. Sections 20.10(1) and 20.10(2)(a) and (e): Bad Faith Bargaining.

Local 2607 contends the Commission bargained in bad faith by presenting a dramatically new proposal for the first time at mediation and by delaying bargaining, refusing to meet, and cancelling sessions. The duty to bargain in good faith is generally characterized as the obligation to actively participate in deliberations with a present intention to find a basis for agreement and with a sincere effort to reach a common ground. *See, e.g., Nat'l Labor Relations Bd. v. Montgomery Ward & Co.*, 133 F.2d 676, 686 (9th Cir. 1943); *City of Sioux City*, 95 H.O. 4993, at 14 (Jan. 24, 1995). Complaints

alleging a party failed to engage in good faith bargaining are addressed on a case-by-case basis. The facts and circumstances of each case are examined to determine if a prohibited practice occurred. *Johnson County*, 06 PERB 6662, at 8 (Apr. 20, 2006) (citations omitted). Local 2607 contends that the Commission's conduct evidences bad faith bargaining under the totality of the circumstances.

A. *Proposal made at mediation outlining 20-hour coverage.*

First, Local 2607 claims the Commission's proposal made at mediation that outlined a bargaining unit work schedule with 20 hours of coverage per day constitutes or is evidence of bad faith bargaining. In support, Local 2607 argues that the Commission does not have a unilateral right to reduce operational hours, that the Commission should have informed Local 2607 that it was contemplating a reduction in the hours of operation of the Airport, that the bargaining unit should provide 24-hour coverage, that the proposal was outside the parameters of the Commission's initial bargaining position, and that the proposal undermined and invalidated all prior negotiations between the parties.

Before addressing the arguments made, it is prudent to set out the types of "hours" at issue here. First, there are the hours during which the Airport is open for business, *i.e.* its hours of operation or operational hours, which are further divided into the operational hours of the commercial airport and the operational hours of the non-commercial functions. Next, there are hours of work, which includes employee starting and quitting times, their break times,

and the number of hours an employee will work in any given shift, day, week, month, or year. See *Scott County*, 12 PERB 8541, at 7-8 (Nov. 21, 2012) (collecting cases). Finally, there is the number of hours during which the bargaining unit collectively provides services to the public employer's operation, referred to by Local 2607 as hours of coverage. This type of hours would generally be established through a master work schedule which outlines when shifts begin and end and the length of the shifts, thus deriving the number of hours of coverage provided by the bargaining unit. Despite these important distinctions, the parties at times combine and confuse these concepts, often using them interchangeably.

Since the mid-term change in 2008, hours of operation, hours of work, and hours of coverage were each 24 hours per day. Hours of operation have been 24 hours per day for both the commercial airport and all non-commercial functions. Hours of work were established by a starting time of 7 a.m. and a quitting time of 7 a.m., with employees thus working 24-hour shifts. In turn, the employees provided 24 hours of coverage per day followed by 72 hours off.

The Board recently recognized the distinction between these concepts in the companion case of *Cedar Rapids Airport Commission*, 13 PERB 8645 (June 17, 2013). There, this Board held that the Commission had the sole right under chapter 20 to determine the number of the Airport's hours of operation, meaning that hours of operation is not a mandatory subject of bargaining. The Board did caution though that the Commission's right under chapter 20 to determine the Airport's hours of operation did not relieve it of the duty to

negotiate over “hours” proposals that predominantly relate to the employment relationship. *Id.* As recognized in a second companion case, *International Association of Professional Firefighters, Local 2607*, 13 PERB 8654 (June 17, 2013), the proposal at issue therein predominantly related to the employment relationship because it addressed starting and quitting times and work schedules and was therefore a mandatory subject of bargaining.

With this backdrop, many of Local 2607’s arguments for why the proposal made at mediation constituted bad faith bargaining lose traction. The Commission does have the unilateral right to reduce the Airport’s hours of operation. The employer’s hours of operation do not fit within any of the mandatory subjects of bargaining, and therefore the Commission is under no duty to negotiate them with Local 2607. But if the parties agree to bargain over permissive subjects such as hours of operation, the Commission must do so in good faith. *See Johnson County*, 06 PERB 6662, at 7 (Apr. 20, 2006) (citations omitted). However, it cannot be said that the Commission and Local 2607 agreed to bargain over the permissive subject of hours of operation. The Commission therefore had no duty to bargain hours of operation in good faith with Local 2607.

Perhaps in hindsight, this claim might have been avoided had the Commission informed Local 2607 that it was considering a reduction in hours of operation prior to making its ultimate decision, but there is no evidence that the Commission failed to do so in bad faith. The evidence establishes that the Commission informed Local 2607 of the new operational hours at the parties’

next meeting following its decision. This suggests that the Commission was attempting to keep Local 2607 apprised of its managerial decisions as they were being made and does not support Local 2607's bad-faith allegations.

Whether the bargaining unit members should provide 24 hour coverage is not for PERB to decide and is not relevant here. This argument goes to the reasonableness of Local 2607's hours of work/work schedule proposal. It is well established that PERB and the Courts are not to determine the reasonableness of proposals. *See State v. PERB*, 508 N.W.2d 668, 673 (Iowa 1993). Whether a proposal should be included in a collective bargaining agreement is for the parties or, in the case of impasse, the arbitrator to decide. *Waterloo Educ. Ass'n v. PERB*, 740 N.W.2d 418, 431 (Iowa 2007) (citation omitted). Whether it is more or less reasonable for the bargaining unit to provide 24-hour coverage is irrelevant to the prohibited practice analysis.

To support its position that proposing a work schedule establishing 20 hours of coverage for the first time at mediation constituted a prohibited practice, Local 2607 also argues that the substance of the proposal was outside the parameters of the Commission's initial position and undermined all prior negotiations.

There is no evidence corroborating Local 2607's claim that the proposal was outside the parameters of the Commission's initial bargaining position. As stated above, the Commission initially proposed deleting references to the 24/72 schedule in the MOA, effectively reverting to the hours of work language in the body of the contract which established 10-hour shifts with 80 hours in

each two-week period. Nothing in the contract dictated how these shifts were to be scheduled, how many hours in a day the bargaining unit members would collectively provide coverage, or the Airport's hours of operation. The proposal made at mediation fits squarely within these confines — it provided for a 10-hour shift schedule with individual members each on duty for four shifts per week, or a total of 80 hours in each two week period. On its face, the proposal made at mediation did not exceed or expand upon the Commission's initial proposal. Further, the Commission's initial proposal put both Local 2607 and the public on notice that the Commission wanted to depart from the current 24/72 schedule. *See Oelwein Cmty. Educ. Ass'n*, 80 H.O. 1593, at 8 (Apr. 11, 1980). The proposal made at mediation was consistent with that obvious goal.

Nor did the proposal “undermine” all prior negotiations. It is uncontroverted that the parties had reached agreement on a number of items that were unaffected by hours of work. If hours of work are still on the table, it naturally follows that shift differentials, overtime, and call back procedures might also still be open subjects in the negotiations. There is no question that the parties had not reached agreement on hours of work at the time of mediation; prior negotiations were not undermined.<sup>8</sup>

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<sup>8</sup> Perhaps what Local 2607 is really concerned with is that the reduction of operational hours arguably undermines its arbitration position. But whether the 24/72 schedule is the most reasonable work schedule in light of operational hours of 20 hours per day is a question for the parties or the arbitrator, not PERB. *See State*, 508 N.W.2d at 673.

Local 2607 has not met its burden to prove the Commission acted in bad faith when it made its proposal, the effect of which was 20-hour coverage by the bargaining unit.

*B. Delays in the bargaining process.*

Local 2607 argues that the Commission committed a prohibited practice by delaying negotiations, refusing to meet, and cancelling sessions. Local 2607 has failed to carry its burden to prove the Commission's actions amounted to a failure to bargain in good faith in any of these respects.

The Commission initially requested that the parties delay bargaining, but there is no evidence that this was done in bad faith. Bradshaw testified that he did not fully understand the timelines under chapter 20 when Local 2607 first requested bargaining. The parties did exchange initial proposals after Bradshaw learned of the statutory requirements, evidencing that the Commission sought to comply with chapter 20.

The Commission then requested that further bargaining be delayed until February 2013. There is no evidence that Local 2607 objected to the delay. In fact, it was not uncommon for the parties to delay negotiations until after other larger units, like the Cedar Rapids Fire Fighters, had come to an agreement. Ultimately, the parties did meet for bargaining in February 2013.

The parties then jointly agreed that their next meeting would be in April, with a negotiation session in the morning followed by mediation. It is true that the Commission cancelled the morning negotiation session, but there is nothing that establishes this constituted a refusal to bargain in good faith. The

evidence suggests the opposite—that the Commission cancelled the bargaining session in an attempt to facilitate a voluntary agreement. Bradshaw testified that he believed that further direct negotiations would be unfruitful and the help of a third party neutral would be beneficial. Local 2607 has not met its burden to prove the Commission delayed negotiations, refused to meet, or cancelled sessions in violation of its duty to bargain in good faith.

The Board has considered all other arguments set forth by Local 2607 and concludes they are without merit. In totality, Local 2607 has not satisfied its burden to prove that the Commission engaged in bad faith bargaining or otherwise refused to bargain in good faith.

## II. Section 20.10(2)(f) and (g).

Local 2607 cites paragraphs (f) and (g) of section 20.10(2) as grounds for concluding that the Commission committed a prohibited practice, but does not make any arguments addressing them. Local 2607 continually argues the Commission bargained in bad faith and provides examples of why that is so, but does not treat the section 20.10(2)(f) and (g) grounds in the same manner. Local 2607 failed to explain how any of the evidence presented proves that the Commission denied the rights accompanying certification under chapter 20 or refused to participate in good faith in the parties' independent impasse procedures. Local 2607 seemingly abandoned paragraphs (f) and (g) of section 20.10(2) as grounds, and failed to establish any prohibited practice based upon those provisions.

CONCLUSION

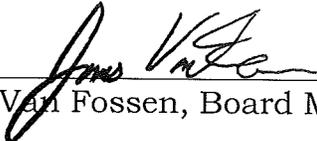
For the reasons discussed above, Local 2607's petition is DISMISSED.

DATED at Des Moines, Iowa, this 6th day of August, 2013.

PUBLIC EMPLOYMENT RELATIONS BOARD

By:   
James R. Riordan, Chair

  
Janelle L. Niebuhr, Board Member

  
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