

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

IN THE MATTER OF:)

CEDAR RAPIDS AIRPORT COMMISSION,)
Petitioner/Public Employer,)

and)

INTERNATIONAL ASSOCIATION OF)
PROFESSIONAL FIREFIGHTERS, LOCAL 2607,)
Certified Employee Organization/)
Intervenor.)

Case No. 8645

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PUBLIC EMPLOYMENT
RELATIONS BOARD

DECLARATORY ORDER

This matter comes before the Public Employment Relations Board (the Board or PERB) upon the Cedar Rapids Airport Commission's (Commission) petition for a declaratory order filed on April 30, 2013. The Board subsequently granted the petition for intervention of the International Association of Professional Firefighters, Local 2607 (Local 2607). On May 28, 2013, the parties presented oral arguments to the Board. James Hanks represented the Commission, and Charles Gribble represented Local 2607. The parties also submitted both pre-argument and post-argument briefs addressing the question presented.

Iowa Code section 17A.9(2) (2013) 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 are held or factual determinations made in such

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

The Commission's petition sets out a number of purported facts, representing that it was created by the City of Cedar Rapids pursuant to Iowa Code chapter 330 and operates the Eastern Iowa Airport (Airport), a commercial airport regulated by the Federal Aviation Administration (FAA). FAA regulations prescribe the minimum hours of operation of a commercial airport, requiring that a commercial airport maintain staff to operate the airport beginning fifteen minutes prior to the first scheduled takeoff or landing of a commercial airplane and continuing until fifteen minutes after the last scheduled takeoff or landing of a commercial plane. Unless otherwise dictated by the scheduled flights of the Airport, FAA regulations do not require a commercial airport to operate for twenty-four consecutive hours in a day. No state statutes or regulations, including Iowa Code chapters 330 and 364, require a commercial airport to operate twenty-four hours per day.

The public safety employees of the Commission comprise a PERB-determined bargaining unit that is represented by Local 2607. The Commission and Local 2607 are parties to a collective bargaining agreement in effect for the period beginning July 1, 2010, and ending June 30, 2013. The collective bargaining agreement contains a provision relating to hours of work. A Memorandum of Agreement attached to the collective bargaining agreement also contains a provision relating to hours of work.

The Commission and Local 2607 are currently engaged in negotiations for a successor agreement. The Commission acknowledges that it has a duty to negotiate with Local 2607 regarding the hours of work of the employees which it represents, but the parties have disagreed with regard to the right of the Commission to determine the hours of operation of the Airport. The Airport currently operates twenty-four hours per day.

The Commission's petition poses the following specific question:

Whether the Commission has the exclusive right and authority to determine the hours of operation of the Airport, including, but not limited to, the right and authority to determine that the hours of operation of the Airport will be fewer than twenty-four hours per day.

The Commission asks the Board to answer this question in the affirmative.

Because its jurisdiction is discrete and limited, the Board reads the question presented to ask whether the Commission has the exclusive right and authority under Iowa Code chapter 20 to determine the hours of operation of the Airport and will limit its order accordingly. Other statutory and regulatory provisions may place restrictions on the Commission's rights and authority. The Board's order does not address any legal obligation concerning hours of operation the Commission may have pursuant to some federal or state law, except those outlined in Iowa Code chapter 20.

In its petition for intervention, Local 2607 does not appear to dispute these facts but presents several additional allegations. Of particular importance, Local 2607 points out that the parties are involved in two other cases currently pending before PERB. In Case No. 8637, Local 2607 alleges

that the Commission committed a prohibited practice by engaging in bad faith bargaining when it informed Local 2607 during a mediation in April 2013 that the Commission intended to begin operating the Airport twenty hours per day instead of twenty-four hours per day. In Case No. 8654, Local 2607 requests the expedited resolution of a negotiability dispute over a proposal it presented during the course of bargaining the successor agreement. The proposal provides an employee shift schedule which includes twenty-four hour shifts with arrival and dismissal times set at 7:00 a.m. Local 2607 urges the Board to decline to issue a declaratory order pursuant to paragraphs (b), (c), (d), (e), and (h) of PERB rule 621—10.9(1). In the alternative, Local 2607 asks that the Board answer the question presented in the negative.

I. THRESHOLD QUESTION: SHOULD A DECLARATORY ORDER ISSUE?

Both Iowa Code section 17A.9 and PERB rule 621—10.9 provide that the Board may refuse or decline to issue a declaratory order when a petition has been filed. Specifically, PERB rule 621—10.9(1) provides, in part, that:

The board . . . may refuse to issue a declaratory order on some or all questions raised for the following reasons:

* * *

b. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the board's failure to issue a declaratory order.

c. The board does not have jurisdiction over the questions presented in the petition.

d. The questions presented by the petition are also presented in a current rule-making, contested case or

other agency or judicial proceeding that may definitively resolve them.

e. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.

* * *

h. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge an agency decision already made.

However, even if a ground for possible refusal to issue exists, this does not mean that the Board must decline to answer. *See, e.g., UNI-United Faculty*, 12 PERB 8502, at p. 4 (May, 30, 2012). In its discretion, the Board may still issue a declaratory order to provide reliable advice to the parties. *See, generally*, Iowa Code § 17A.9(2).

Regardless, none of the enumerated grounds urged by Local 2607 apply here. The petition sufficiently demonstrates that the Commission would be adversely affected if the Board declined to answer its question. Failure to answer the question presented would leave the Commission without direction on the scope of its chapter 20 right to alter the Airport's hours of operation. This is a clear adverse effect on the Commission's ability to plan both current and future conduct.

While it is true the Board does not have jurisdiction over questions concerning Iowa Code chapters 330 and 364 and FAA regulations, those citations were provided merely as context. Absent such references, the petition still sets forth sufficient facts for the Board to consider the question presented.

The crux of the question presented lies in the interpretation of chapter 20 provisions, namely sections 20.7 and 20.9. The Board undisputedly has interpretative powers over them. See Iowa Code § 20.6(1).

As the Board previously concluded in its ruling dated May 3, 2013, denying a motion to consolidate, the question presented here is distinct and separate from the issues pending in Case No. 8637. Whether the Commission committed a prohibited practice by bargaining in bad faith does not resolve the issue of the Commission's right to establish operational hours. Likewise, resolution of Case No. 8654 would not definitively answer the question presented in this case. The proposal at issue in Case No. 8654 clearly addresses the employee shift schedule, number of hours during an employee's shift, and the shifts' starting and quitting times, not the Airport's operational hours. Under the circumstances, a declaratory order appears to be the most appropriate means to resolve the question presented.

Accordingly, the Board concludes there is no compelling reason to refuse to answer to the question presented in the petition.¹

II. MERITS

It has been widely recognized since the inception of the Public Employment Relations Act that the statute grants public employers expansive

¹ In its reply brief, Local 2607 for the first time argues that paragraph (f) of PERB rule 621—10.9(1) also provides a basis for the Board to decline to answer the question presented. Paragraph (f) states that the Board may refuse to answer a question if “[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.” Regardless of whether such argument was timely presented, the Board does not believe it should decline to an answer on this ground.

rights. Unlike the National Labor Relations Act, chapter 20 includes a management rights provision, which provides:

Public employers shall have, in addition to all powers, duties, and rights established by constitutional provision, statute, ordinance, charter, or special act, the exclusive power, duty, and the right to:

1. Direct the work of its public employees.
2. Hire, promote, demote, transfer, assign and retain public employees in positions within the public agency.
3. Suspend or discharge public employees for proper cause.
4. Maintain the efficiency of governmental operations.
5. Relieve public employees from duties because of lack of work or for other legitimate reasons.
6. Determine and implement methods, means, assignments and personnel by which the public employer's operations are to be conducted.
7. Take such actions as may be necessary to carry out the mission of the public employer.
8. Initiate, prepare, certify and administer its budget.
9. Exercise all powers and duties granted to the public employer by law.

Iowa Code § 20.7. This clause preserves “exclusive, public management powers in traditional areas.” *Waterloo Educ. Ass’n v. PERB*, 740 N.W.2d 418, 421 (Iowa 2007) (hereinafter *Waterloo II*). However, these powers are tempered by the public employer’s duty to negotiate in good faith with its employees’ chosen representative over the so-called “laundry list” of mandatory topics found in section 20.9.

In its 2007 decision in *Waterloo II*, the Iowa Supreme Court clarified the two-pronged test used to determine the negotiability status of a contract proposal. *Id.* at 429. First, the Board must determine whether the proposal comes within one of the section 20.9 mandatory topics of bargaining. *Id.* Second, the Board must determine if the proposal is illegal. *Id.* Only in the rare circumstance where the predominant purpose of the proposal cannot be readily determined may the Board engage in a balancing test.² *Id.* While the Board has no proposal to consider here, the two-pronged test frames the analysis necessary to answer the question presented.

One can easily glean a public employer's right to determine its own operational hours from section 20.7's named rights, including the rights to maintain the efficiency of governmental operations, determine the methods and means by which operations are to be conducted, and take actions necessary to carry out the employer's mission. But did the legislature intend to limit this employer right to determine operational hours by including the topic "hours" in section 20.9 as Local 2607 argues? The answer to this question hinges on the meaning of "hours" within the context of section 20.9.

When defining "hours," the *Waterloo II* Court directs PERB to use a common and ordinary meaning within the confines of section 20.9. When discussing the term "wages," it said:

² In setting forth this test, the Court stated that generally no balancing of employer and employee interests should occur because the legislature already balanced those interests by listing the mandatory topics of bargaining in section 20.9. *Waterloo II*, 740 N.W.2d at 428-29. In other words, the mandatory topics are exceptions to the management rights reserved in section 20.7. *Id.* at 429.

[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. We see no reason to depart from the approach of these prior cases.

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.

740 N.W.2d at 429-30 (citations omitted). Prior to this pronouncement, section 20.9 topics were given narrow and restrictive meanings. *See Fort Dodge Cmty. Sch. Dist.*, 12 PERB 8512, at p. 6 (July 2, 2012) (collecting cases). In light of this, the Board recently stated that it must review past definitions of section 20.9 topics to determine whether a definition is “narrow and restrictive” or whether it is the common and ordinary meaning of the term within the context of section 20.9. *See Scott County*, 12 PERB 8541, at pp. 7-8 (Nov. 21, 2012).

PERB case law establishes that “hours” includes the total number of hours of a workday, the starting and quitting times, and break times. *See id.* (collecting cases). PERB has also held that proposals addressing employees’ right to be notified of their hours of work are mandatory. *Id.* at p. 8. Notably,

each of these subjects previously deemed mandatory under “hours” are predominantly related to the employees’ work day, not the employer’s operations. Where the employer’s ability to direct its operations is the primary focus, such as proposals dealing predominantly with assignment and staffing, this Board has held them non-mandatory. *See id.* *See, also, Black Hawk County*, 06 PERB 7218 (Apr. 6, 2006). PERB has continued this distinction even after the issuance of *Waterloo II*. *See, e.g., Scott County*, 12 PERB 8541.

The Board thinks this view reflects the common and ordinary meaning of “hours” in the context of section 20.9. The mandatory topics outlined in section 20.9, including “hours,” address issues uniquely related to the employees’ relationship with their employer. The Board must define “hours” as an exception to the employer’s section 20.7 rights through this lens. If the “hours” proposal is not predominantly related to the employment relationship, then it is not a mandatory subject of bargaining. *Cf. Area IV Cmty. Coll. Educ. Ass’n*, 79 PERB 663 & 674, at p. 4 (Apr. 9, 1976) (stating insurance proposal mandatory under insurance because it is related to the employment relationship) and *Area I Vocational-Technical Sch. Dist.*, 76 PERB 650, at p. 2 (Mar. 31, 1976) (same).

Generally, hours of operation are not predominantly related to the employment relationship, but rather to the relationship between the public employer and its constituents. When and for how long a public employer operates or is “open for business” affects the level of service the public employer can provide to the public. This runs parallel to the public employer’s

rights regarding assignment and staffing. A public employer's decision on which and how many employees are on duty also affects the level of service.

Local 2607 argues that PERB's decision in *Sergeant Bluff-Luton Education Association*, 76 PERB 715 (Oct. 4, 1976), is controlling and supports its position. In *Sergeant Bluff*, the following proposal was at issue:

EMPLOYEE HOURS – ARRIVAL AND DEPARTURE TIME

No teacher shall be required to report for duty no earlier than 8:00 a.m. and, the teacher shall be permitted to leave at 4:00 p.m. On Friday or days preceding holidays or vacations, the teacher's day shall end at the close of the pupil's day. Exceptions to the arrival and departure times may be made in cases of extreme emergency.

PERB held this proposal mandatory under "hours" because it established employees' arrival and departure times. In so holding, the Board referenced National Labor Relations Board cases discussing "working hours." The Board then stated: "Nor can we alter our conclusion because the possibility exists that negotiations might limit indirectly the hours during which an employer operates." *Id.* at p. 4. Local 2607 argues this statement supports its position that the Commission must negotiate over all possible aspects of operational hours. However, one must read this statement in light of the proposal being reviewed; the *Sergeant Bluff* Board was analyzing a starting and quitting times proposal, not a proposal that mandated the actual hours of operation.

This is consistent with PERB's holdings on other mandatory topics. For example, a public employer has sole discretion to determine when a layoff will

occur and the number of employees who will be affected. But after those decisions have been made, the public employer must negotiate the order and manner by which the staff reduction will occur. *See, e.g., Bettendorf & Dubuque Cmty. Sch. Dists.*, 76 PERB 598 & 602, at pp. 16-17 (Feb. 3, 1976). PERB has also consistently held that the employer has the right to determine the employees' workload but then must negotiate wages based upon that set workload. *See Sergeant Bluff*, 76 PERB 715, at pp. 1-2. And school districts have the right to establish the length of the school calendar but must bargain items such as vacations and in-service training days. *See North Scott Cmty. Sch. Dist.*, 77 PERB 931, at pp. 3-4, 7 (Mar. 3, 1977). PERB has also held that management "retains the right to determine whether an involuntary transfer is necessary, including the conditions which might make it so." *See Western Hills AEA 12*, 81 PERB 1848, at p. 18 (Feb. 6, 1981). These examples support the proposition that public employers possess the exclusive right to manage their operations subject only to the exceptions carved out by section 20.9.

The context of section 20.9 requires that each mandatory topic, including "hours," predominantly relate to the employment relationship. Employees' starting and quitting times, break times, and the number of hours an employee works in a given shift, day, week, month, or year undisputedly relate predominantly to the employment relationship. But operational hours are "essentially an issue of level of service to the public, a policy matter reserved to the [Commission]." *City of Sioux City*, 78 PERB 1211, at p. 2 (Feb. 22, 1978) (citing *City of Dubuque*, 77 PERB 964 (Mar. 9, 1977)).

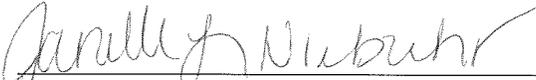
CONCLUSION

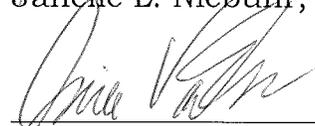
In response to the question presented by the Commission, the Board concludes that the Commission, as a public employer, has the exclusive right and authority under Iowa Code chapter 20 to determine that the Airport's hours of operation will be fewer than twenty-four hours per day. The Board further concludes that the Commission has the right and authority under Iowa Code chapter 20 to determine the hours of operation of the Airport subject to the Commission's duty to negotiate with Local 2607 over "hours" proposals that predominantly relate to the employment relationship, such as employees' starting and quitting times, break times, and the number of hours employees work.

DATED at Des Moines, Iowa, this 17th day of June, 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

Charles E. Gribble
Parrish Kruidenier
2910 Grand Avenue
Des Moines, IA 50312
cgribble@parrishlaw.com