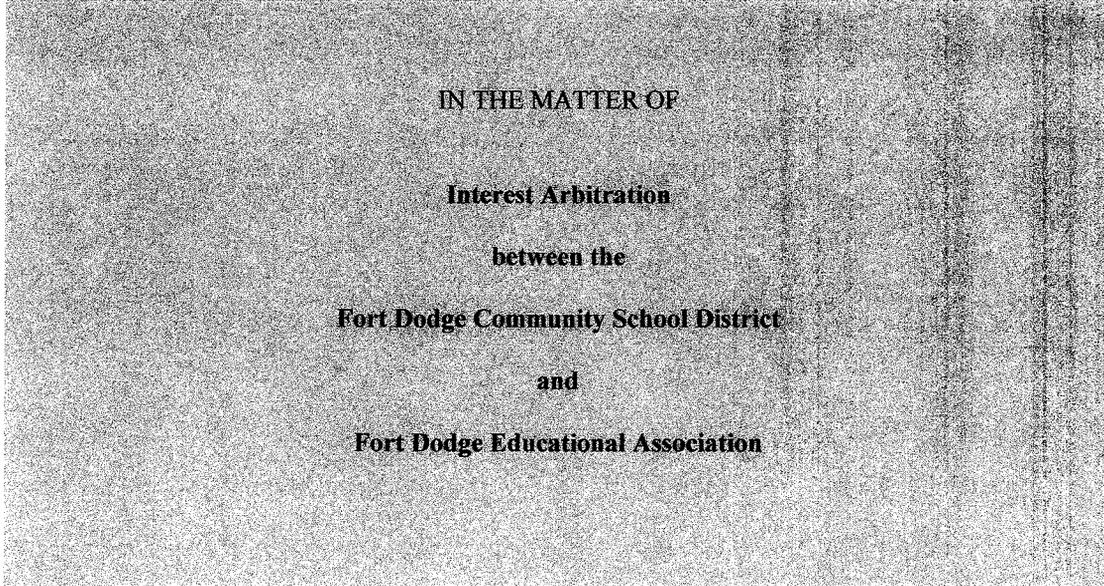


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**DECISION OF THE  
ARBITRATOR**



**IOWA PERB CASE NO. CEO 937/Sector 1**

**REPRESENTATIVES:**

School District: Drew Bracken, Attorney

Association: Beth Myers, Staff Representative

**DATE OF DECISION:**

July 8, 2014

**DATE OF HEARING:**

June 18, 2014

**EXHIBITS:**

- School District: Note Book of Exhibits, Nos. 1-16 a-t.
- Association: Note Book of Exhibits, Introduction and Language Nos. 1-11.  
Economics Nos. 1-14.

**ARBITRATOR'S AUTHORITY:**

By E-Mail dated May 9, 2014, the Iowa Public Employment Board (PERB) notified Peter Obermeyer of his selection by the parties to hear and decide PERB Case No. CEO: 937/Sector 1. The parties to the dispute were identified as the Fort Dodge Community School District (District or Employer) and the Fort Dodge Education Association (Association or Educational Association). The bargaining unit involved was Teacher Associates of the District.

On Wednesday, June 18, 2014, at 10:00 A.M., a hearing was held in the Conference Room of the Central Office of the District, Fort Dodge, Iowa. At the hearing both parties were provided the opportunity to present exhibits and testimony which were relevant to the impasse items in dispute.

Based on the record developed at the hearing of June 18, 2014, the Arbitrator was obligated to select one party's "final offer" on the issues at impasse. Iowa Code establishes the following criteria, along with other "relevant factors", as the basis for selecting the District's or the Association's position, on the impasse items in dispute, as the "most reasonable". The criteria to be used by the Arbitrator are:

1. Past collective bargaining contracts between the parties including the bargaining that led up to such contracts.
2. Comparison of wages, hours and conditions of employment of the involved public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved.

3. The interests and welfare of the public, the ability of the public employer to finance economic adjustments and the effect of such adjustments on the normal standard of services.

4. The power of the public employer to levy taxes and appropriate funds for the conduct of its operations.

The decision in this case was based on the record of the hearing and the criteria of Iowa Code, Section 20.22 (7).

The representatives of the District and the Association agreed that the Arbitrator's decision, postmarked no later than Tuesday, July 8, 2014 would be accepted as timely by the parties.

## **INTRODUCTION:**

1. Background. The District is located near the center of the State of Iowa, in the City of Fort Dodge, the County of Webster. The District has approximately 30,000 people living within its boundaries, having an enrollment of about 3, 800 students.

The Students are educated at one preschool, four elementary, one middle, and one high schools. Approximately 540 employees work for the District, 123 as Associates. Of the 123 Associates, 27 are categorized as "Regular Associates" and 94 as "Special Education Associates".

Five bargaining units have been established in the District for the purposes of collective bargaining under Chapter 20 of Iowa Code. The units are for teachers, teacher associates, secretarial-clerical, maintenance, and bus drivers. All units are represented by the Fort Dodge Education Association, an affiliate of the Iowa State Education Association.

The Teacher Associates became represented by the Association in early 1989. Initial bargaining between the parties resulted in a one year agreement for the 1989-1990

school year. The parties have had a generally constructive collective bargaining relationship since the initial certification in 1989. Mediation by Iowa PERB is often successfully used by the parties. The exception being the 2003-2004 settlement which involved mediation, fact-finding, and interest arbitration.

Negotiations and mediation for a 2014-2015 agreement resulted in an impasse between the parties.

2. The Iowa Arbitration System. Iowa's final offer, issue by issue arbitration system requires the Arbitrator to select the final offer of either the District or the Association on each of the issues at impasse. In this case two issues - beginning base wage rate increase and hours of work lost due to an early dismissal or a late start of school are in dispute. As is true in other final offer arbitration cases, the Arbitrator in this impasse may have reached a decision that would have differed from either the District's or Association's final position, if such latitude existed.

3. Arbitrator's Bias. The Arbitrator has two biases concerning the system of collective bargaining, which influenced the outcome of this case. First, contrary to the arbitrators referenced by the Association in their Exhibit No. 6, this Arbitrator would argue that changes made to existing contract language are best left to the parties. It is through the bargaining process that labor and management craft an agreement that suits their needs. An Arbitrator's decision should encourage the parties to reach future negotiated settlements. And second, adding or subtracting a term or condition of employment from an existing collective bargaining contract is justifiable only in unique circumstances. Absent major abuse, inconsistency with written rule, law, or significant variance from a comparability group, this Arbitrator is reluctant to make such modifications from an existing collective bargaining contract.

#### **ISSUES AT DISPUTE:**

Through Exhibits<sup>1</sup> received at the hearing and by stipulations into the record by the parties representatives the issues at impasse were identified as:

1. Article X: Hours of Work.
  - A. Adverse Weather/Emergency Dismissal.
2. Article XII: Wages.
  - A. The beginning base wage for the 2014-2015 contract year will be \_\_\_\_\_ per hour.

### **NEGOTIABILITY DISPUTE:**

The District, through its Exhibit No. 10, informed the Arbitrator that it had filed a Petition in Negotiability Dispute and Request for Expedited Ruling concerning Issue No. 1, “Adverse Weather/Emergency Dismissal”. The District contends that the proposal by the Association is “a ...permissive topic of negotiations”. It requests that Iowa Public Employment Relations Board rule that the above subject “... is pervasive rather than a mandatory topic of negotiation ...”.<sup>2</sup> At the time of the hearing no decision had been issued.

Consistent with Iowa PERB Rules the Arbitrator will “... rule on items just as you would if there were no negotiability dispute pending”.<sup>3</sup>

### **POSITION OF THE PARTIES:**

Issue No. 1 Article X, A. Adverse Weather/Emergency Dismissal.

### POSITION OF THE DISTRICT.

The District argues that no change should be made in the “late start-early release” language of the Agreement for three reasons. First, if the subject of work release with pay is found to be a mandatory subject of bargaining by Iowa PERB, it should be left to

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<sup>1</sup> District Exhibit Nos. 1 and 2 Association Exhibit Nos. 2 and 3.

<sup>2</sup> Iowa PERB, Case No. 8876.

<sup>3</sup> Iowa PERB, Subrule 621-6.3(2).

the parties to craft by negotiations, not directed by the Arbitrator. Second, using a large district of Iowa schools “pool” for comparison, indicates that only four districts of that 20 district “pool” have language which provides pay for hours lost and not worked. A majority of these four agreements have conditions and limitations concerning hours lost due to late start or early releases.<sup>4</sup> And third, a comparison of language covering paid absences of other District employees, finds that other “hourly” paid employees (Bus Drivers) do not receive such a benefit.

For these reasons the District maintains that it’s final position is the “most reasonable”.

#### POSITION OF THE ASSOCIATION.

The Association supports it’s final position concerning the adverse weather/emergency dismissal language with four arguments. First, during the last four rounds of bargaining (2009-10, 2010-11, 2011-12, and 2012-2014) no change was made to Article X, Section A. It would be appropriate to award the Association’s position given several Iowa PERB arbitrators’ decision concerning repeated impasses over the same issue in bargaining.

Second, internal comparability argues for extending pay for time lost due to a shortened day to the Para-educators, of the four non-teacher units two (Bus Drivers and Maintenance) are not affected by an adverse weather/early dismissal event and Secretaries have agreement language which provides some protection against wage loss. Only Teacher Associates are put at wage risk in the event of a school closing.

Third, the current Teachers Associates Agreement language is not working in practice. Following a late start or early dismissal event, supervisors are not allowing lost time to be rescheduled by Para-educators, resulting in a pay loss for affected employees.

And finally, granting this improvement would not increase the District’s total budget cost.

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<sup>4</sup>District Exhibits 16J, K, M, and Q.

Issue No. 2. Article XII, Paychecks, Section A.

Both parties wage “final offer” increased the beginning base wage by a cents per hour improvement, rather than a percentage adjustment.<sup>5</sup> The total package percentage increase of wages and benefits were remarkably close. The District costed their total package proposal at a percentage increase of 4.26%<sup>6</sup> and a wage cost increase of 4.28%.<sup>7</sup> Calculation by the Association resulted in a total package increase of 4.45% and a wage increase of 4.54 %.<sup>8</sup> The dollar difference of the wage and benefits total package was approximately \$5000, the District costing at \$116, 262<sup>9</sup> and the Association at \$121,441.<sup>10</sup>

POSITION OF THE DISTRICT.

The District justifies it’s “final position” for a wage increase on three contentions. First, the historical pattern of bargaining total package settlements with represented employees of the District is reasonably consistent. The settlements between 2000-2001 and 2014-2015 were predominately between 3% and 4%.<sup>11</sup> Rarely did a bargaining unit settlement vary by more than 1% from other units during a bargaining year.

Second, bargained settlements for the 2014-2015 school year continues this pattern. Settlements for 2014-2015 have been Bus Drivers 4.25%, Custodial-Maintenance 4.07%, Clerical-Secretarial 3.96%, and Teachers at 4.25%.<sup>12</sup> A continuation of this settlement pattern.

Third, external Iowa school districts settlements were developed for three “pools” of districts - athletic conference; ten larger and ten smaller, based on enrollment; and large enrollment districts. The CIML Iowa Metropolitan League has 17 members that

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<sup>5</sup> District Exhibit No. 1 and Association Exhibit No. 2.

<sup>6</sup> District Exhibit No. 1.

<sup>7</sup> Association Exhibit No. 3.

<sup>8</sup> Association Exhibit No. 2.

<sup>9</sup> Association Exhibit No. 3.

<sup>10</sup> Association Exhibit Nos. 2 and 3.

<sup>11</sup> District Exhibit No. 7.

<sup>12</sup> Ibid.

bargain with Teacher Associates, of which 10 had reached an agreement. The total package settlements ranged from 4.50% to 1.94%, with an average increase of 3.21%.<sup>13</sup> The ten above and ten below the District by enrollment “pool” had similar results. Seventeen districts bargain with Associates and 15 have settled. Total package settlements ranged from 4.96% to 1.94%, with an average settlement of 3.69%.<sup>14</sup> Finally, the 26 Iowa large enrollment districts “pool” had a range of settlements from 4.96% to 1.94%, with an average of 3.53%.<sup>15</sup> The District concluded, that these three external district comparison “pools” validated it’s final position as the most reasonable. The District summarized, that although it was not arguing the “inability to pay”, the economic and enrollment dynamics of the District required it to be prudent and cautious in it’s fiscal behavior.<sup>16</sup> Internal District wages and salaries must have some consistency based on the total compensation package and the financial viability of the District into the future.

#### POSITION OF THE ASSOCIATION.

The Association focused their arguments on the rapidly improving financial status of the District. They concluded that the:

“Fort Dodge School District’s financial position is excellent and has the ability to pay the Association’s position”.<sup>17</sup>

It’s strength is demonstrated by the following financial measurements of the District:

1. Regular program increase of \$1,025,105, a 4.5% in 2014-2015, which is in the top 1/3 of Iowa school districts.<sup>18</sup>
2. Special education revenues for 2014-2015 increase by \$342,054, a 10.2% increase. A substantial number of positions in the Associates

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<sup>13</sup> District Exhibit No. 8, p.1.

<sup>14</sup> Ibid., p.2.

<sup>15</sup> Ibid., p.3.

<sup>16</sup> District Exhibit No. 9.

<sup>17</sup> Association Exhibit No. 14, p.2.

<sup>18</sup> Association Exhibit No. 2.

bargaining unit will be paid from these revenues.<sup>19</sup>

3. The District finished the 2012-2013 budget year with an unspent balance of \$4,177,095, although a decrease of %150,151, from 2011-2012, this is the largest amount of unspent balance since 2004-2005.<sup>20</sup>
4. An ending fund balance, as of June 30, 2013, of \$8,300,541.<sup>21</sup>
5. A solvency ratio of 18.87% as of the end of the 2012-2013 budget year. The solvency ratio is a measurement of the Districts readily available unspent resources compared to it's total general fund revenue. The generally accepted "Target Solvency Position" is between 5.0% and 10%.<sup>22</sup>
6. The District's 2014-2015 budget had a total tax rate at \$15.46 per thousand dollars of assessed valuation, which is a slight decrease from the 2013-2014 budget year.<sup>23</sup>

The Association summarizes their wage rate final position, with the conclusion that the District's strengthening financial condition is consistent with their ~~4.45%~~ 4.45% total package final position.

## **DISCUSSION AND DECISION:**

### **1. Loss of Hours: School Closing.**

The Agreement's current language covering late starts and early dismissals has been a major issue for the Association in recent rounds of bargaining. The Association has been unsuccessful in it's attempts to negotiate an improvement in the conditions under which Associates would be paid for hours not worked in the event of a late start or early closing, which cannot be rescheduled to make up for time lost due to the closing. In the Association's judgment this results from the supervisors' of Associates not giving

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<sup>19</sup> Association Exhibit No. 4.

<sup>20</sup> Association Exhibit No. 8.

<sup>21</sup> Association Exhibit No. 9.

<sup>22</sup> Association Exhibit No. 11.

<sup>23</sup> Association Exhibit No. 13.

timely responses to such requests or denying such requests.

Bargaining between the parties concerning the time lost due to a school closing was established in the 2003-2004 Agreement. It basically provided the Associates with an "... opportunity to make up the missed hours". Negotiations since 2003-2004 have resulted in little change to Article X language, which would alter the original language. The Article now reads that an Associate "... will be given the opportunity to make up the missed hours".<sup>24</sup>

The past collective bargaining between the parties, particularly since the original settlement resulting from the 2002-2003 negotiations, has resulted in little modification to the initial language. The outcome of the bargaining process is the forum to make changes to Article X. No "major abuse" has been found by the Arbitrator in the District's administration of the Article.

A comment to the District and the Association: Successful implementation of this Article requires a "good faith" effort in its administration. Timely requests by Associates for a scheduled makeup day of work and timely responses to those requests is crucial.

The District has collective bargaining agreements with five bargaining units - Teachers, Secretarial-Clerical, Teacher Associates, Maintenance, and Bus Drivers. The bargaining units have employment relationships with the District which vary. Teachers are employed annually for a given number of days they will perform "teaching" duties. Secretarial-Clerical and Maintenance personnel are considered monthly employees engage for 10, 11, or 12 months a year. Teacher Associates and Bus Drivers have a "daily" relationship, generally working only on days which students are in the schools.

Secretarial-Clerical and Maintenance employees have agreements which provide some protection from lost wages in the event of a school closing, Teacher Associates and Bus Drivers do not. The appropriate internal comparison in this situation is between employee groups which have "daily" employment relationships with the District-Teacher Associates and Bus Drivers. The Arbitrator concludes that the "internal" comparable

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<sup>24</sup>Association Exhibit No. 4.

does not justify a change in current language.

The District prepared a document which identified a “pool” of 27 “large” Iowa school districts.<sup>25</sup> Of the 27 districts 20 had contracts covering Teacher Associates. Of the 20 only four had language covering time lost due to a late start or early closing.<sup>26</sup> Of the four, three had limits or restrictions for receiving pay for a shortened school day.<sup>27</sup> As true with the “internal” comparables an “external” comparison yielded a similar outcome. There is not a justification for a change of current Article X language.

2. Beginning Base Wage Rate of the Para-educator for the 2014-2015 contract year shall be \_\_\_\_\_.

Three criteria of Iowa Code 20.22, subd. 7, were appropriate for evaluating this issue. They were past collective bargaining, internal and external comparables, and the financial stature of the District.

The parties’ “final position” total package cash for the base wage rate of Teacher Associates differed by approximately a total cost of \$5000 and a percentage of 4.26% and 4.45%.<sup>28</sup> Since the 2001-2002 round of bargaining with the five units of represented employees, the total package settlements for all units were generally between 3% and 4%.<sup>29</sup> The total package settlements between units generally did not vary by more than 1%.<sup>30</sup> Settlements for the 2014-2015 year of the four units,<sup>31</sup> excluding Teacher Associates, ranged from 3.36% (Secretarial-Clerical) to 4.25% (Teachers and Bus Drivers). These settlements match the historical bargaining pattern of the District and its unionized employees.

The District’s 4.26% total package increase is consistent and comparable with the other settlements for the 2014-2015 school year.

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<sup>25</sup> District Exhibit No. 16.

<sup>26</sup> Ibid.

<sup>27</sup> District Exhibit Nos. 16J, K, M, and Q.

<sup>28</sup> District Exhibit No. 1 and Association No. 2.

<sup>29</sup> District Exhibit No. 7.

<sup>30</sup> Ibid.

<sup>31</sup> District Exhibit No. 8, p.1.

External comparables used by the District were the Fort Dodge Districts' Athletic Conference, a ten district larger, based on enrollment, and ten district smaller "pool", and a 26 district "pool" of large enrollment Iowa school districts.

The Athletic Conference (CIML Iowa Metropolitan Conference) comparison "pool" includes 19 large Iowa districts. Settlements ranged from 1.94% to 4.50% with an average of 3.21% for Teacher Associates. Districts included in the 10 up/10 down "pool" ranged from 1.94% to 4.96%, with an average 3.69% settlement.<sup>32</sup> The third "pool", large Iowa school districts, had an average settlement of 3.53% and a range of settlements from 1.94% to 4.96%.<sup>33</sup> The District's 4.26% total package "final position" compares more favorably with the three "pools" averages of 3.53%, 3.69%, and 3.21% than does the Associations 4.45% position.

The third criteria used by the Arbitrator was the financial status of the District. The record of the hearing gives evidence of the strengthening financial status of the District, demonstrating it's sound financial management. At the hearing the District stated for the record that it was not arguing that it had a "financial inability to pay" for a settlement.

### 3. Decision.

The bargaining history of the parties and internal and external comparables, on both issues, the Arbitrator finds that the District's final positions as the most reasonable. Therefore, the 2014-2015 Agreement shall reflect the following changes:

#### 1. Article X: Hours of Work

##### Adverse Weather/Emergency Dismissal

No Change in the 2012-2014 Agreement.

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<sup>32</sup> Ibid., p. 2.

<sup>33</sup> Ibid., p. 3.

2. Article XII: Wages

The base 2013-2014 hourly wage shall be increased by \$.40 for the 2014-2015 contract year.

Signed this 8th day of July, 2014

  
Peter E. Obermeyer

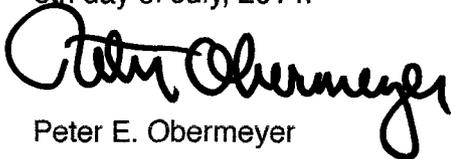
## CERTIFICATE OF SERVICE

I certify that on the 8th of July, 2014, the Arbitrator served this Decision on the representatives of the parties by mailing a signed and dated copy to each of them at the following addresses:

Drew Bracken  
Ahlers and Conney  
100 Court Avenue, Suite 600  
Des Moines, Iowa 50309

Beth Myers  
Iowa State Education Association  
808 US Highway 18W  
Char Lake, Iowa 50428

This Decision was also mailed to the Iowa Public Relations Board on the 8th day of July, 2014.

  
Peter E. Obermeyer