

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

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IN THE MATTER OF: )  
)  
CITY OF CLINTON, )  
    Petitioner/Public Employer, )  
)                                   Case No. 100011  
and )  
)  
AFSCME LOCAL #888, )  
    Certified Employee Organization. )

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**RULING ON NEGOTIABILITY DISPUTE**

On January 20, 2015, the City of Clinton filed a petition with the Public Employment Relations Board (PERB or Board) pursuant to PERB rule 621—6.3(20) seeking the Board’s ruling on whether several proposals made by AFSCME Local #888 (Union) during the course of collective bargaining with the City of Clinton (City) are mandatory subjects of bargaining. On January 27, 2015, the City filed an amended petition clarifying the language at issue. No oral arguments were heard in this matter; however, both parties submitted briefs.<sup>1</sup>

The Board issued a preliminary ruling on the negotiability dispute on February 25, 2015, ruling that what it denominated as proposal 4 is a mandatory subject of bargaining and the remaining proposals are permissive subjects of bargaining. On March 5, 2015, the City requested a final ruling on the negotiability dispute only in regard to proposal 4.<sup>2</sup>

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<sup>1</sup> Wilford Stone for the Petitioner and Ty Cutkomp for the Certified Employee Organization.

<sup>2</sup>Petitioner filed a “Notice of Appeal” of the preliminary negotiability dispute purportedly pursuant to PERB rule 621—9.1. On March 17, 2015, the Board issued a Notice to the parties explaining PERB rule 621—9.1 is inapplicable because a negotiability dispute is not a “contested case” and no “appeal” is available. As such, the Board notified the parties it will treat the City’s purported appeal as a request for a final negotiability ruling on proposal 4.

## I. STANDARD AND SCOPE OF NEGOTIABILITY DISPUTES

Subjects of bargaining are divided into three categories: (1) mandatory subjects listed in section 20.9<sup>3</sup> 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). A proposal’s negotiability status is significant because only mandatory subjects of bargaining may proceed through statutory impasse procedures to binding arbitration, unless the parties agree otherwise. *Decatur County v. PERB*, 564 N.W.2d 394, 396 (Iowa 1997).

When determining whether a proposal is a mandatory subject of bargaining, the Board uses the two-pronged approach set forth in *State v. PERB*, 508 N.W.2d 668 (Iowa 1993), 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

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<sup>3</sup> Iowa Code section 20.9 provides that public employers and certified employee organizations representing public employees shall:

negotiate in good faith with respect to wages, hours, vacations, insurance, holidays, leaves of absence, shift differentials, overtime compensation, supplemental pay, seniority, transfer procedures, job classifications, health and safety matters, evaluation procedures, procedures for staff reduction, in-service training and other matters mutually agreed upon. Negotiations shall also include terms authorizing dues checkoff for members of the employee organization and grievance procedures for resolving any questions arising under the agreement . . . .

proposal fits within the scope of a specific term listed in 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.*

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 CSD*, 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 v. PERB*, 397 N.W.2d 764, 766 (Iowa 1986). In order to determine that, 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 CSD*, 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.

When resolving a question of negotiability, the Board has no duty or right to judge the merits of a proposal. *See Waterloo II*, 740 N.W.2d at 431 (citing *Charles City CSD*, 275 N.W.2d at 769). It is up to the parties through negotiations, or arbitrators in impasse resolution proceedings, to adjudge whether any given proposal should be included in a collective bargaining agreement. *Id.*

It is not within our province to judge the merits of any proposal or the desirability of including it in a contract. A proposal may be eminently reasonable, and yet permissive under Section 9 of the Act, or may be outrageously unreasonable, yet mandatory. Our role must continue to be limited to judgments on the negotiability of proposals and not their merit. Whether they are included in a collective bargaining agreement is a matter which the act has appropriately left beyond our purview.

*State of Iowa & AFSCME*, 77 PERB 1000, p. 7.

## **II. ANALYSIS**

As stated above, the City has requested that the Board issue a final ruling on the negotiability status of proposal 4, which provides:

### ARTICLE 14 SENIORITY

Section 4. Termination of Seniority. An employee's seniority terminates for any of the following reasons:

A. Discharge for just reason.

\* \* \*

In its preliminary ruling, the Board held this proposal, including the underlined language, a mandatory subject of bargaining. While the City requested a ruling only on the underlined portion of this proposal, the Board

must consider the entire proposal to determine what it would bind the employer to do. *Charles City CSD*, 275 N.W.2d at 774; *State*, 508 N.W.2d at 673. Reading the underlined language alone does not reveal the subject, scope, or predominant characteristic or purpose of the proposal. It is not until one considers the underlined language in the context of the proposal that the predominant purpose becomes apparent.

Here, proposal 4 would require the employer to terminate an employee's seniority if certain events occurred or standards met. Thus, the predominant purpose of the proposal is determining when seniority terminates, a topic which fits squarely under the section 20.9 subject of "seniority." See *Amalgamated Transit Union Div. 329 & City of Dubuque*, 2004 PERB 6828, at pp. 5-6 (outlining matters included in the definition of "seniority"). That one of the events which may terminate an employee's seniority is "discharge for just reason" does not alter the predominate purpose of the proposal to discipline and discharge as the City argues. The how or why an employee's seniority terminates goes to the merits of the proposal, rather than its negotiability. As stated previously, the Board does not rule on the merits of a proposal but solely whether it falls under a mandatory topic of bargaining. *State of Iowa & AFSCME*, 77 PERB 1000, p. 7. As such, the specific events and standards that the parties propose regarding the termination of seniority are of no import to the Board. Instead, the key is that seniority termination is the predominant purpose of the proposal.

Having decided the proposed language falls squarely within the mandatory topic of seniority under 20.9, the next inquiry for the Board is whether the proposal is preempted or inconsistent with any provision of the law. Neither party argued this; nor does the Board find any preemption of or inconsistency with the law.

For foregoing reasons, the proposal set forth above is a mandatory subject of bargaining under the section 20.9 topic of “seniority.”

DATED at Des Moines, Iowa, this 16th day of April, 2015.

PUBLIC EMPLOYMENT RELATIONS BOARD

By: /s/ Michael G. Cormack  
Michael G. Cormack, Chair

/s/ Janelle L. Niebuhr  
Janelle L. Niebuhr, Board Member

/s/ Jamie Van Fossen  
Jamie Van Fossen, Board Member

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