

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF:)	
)	
STATE OF IOWA (BOARD OF REGENTS/ UNIVERSITY OF IOWA),)	
Public Employer/Petitioner,)	
)	
and)	CASE NO. 100003
)	
UE LOCAL 896/COGS,)	
Certified Employee Organization.)	

RULING ON NEGOTIABILITY DISPUTE

On December 4, 2014, the State of Iowa (Board of Regents/University of Iowa) 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 a proposal made during the course of collective bargaining by the Certified Employee Organization—UE Local 896/COGS—is a mandatory subject of bargaining.¹ Oral arguments were presented to the Board by counsel for the parties on January 7, 2015. Both parties filed briefs.² The Board issued a preliminary ruling on the negotiability dispute on January 14, 2015, ruling that the proposal at issue was a mandatory subject of bargaining. Petitioner requested a final ruling on the negotiability dispute on January 22, 2015.

The proposal at issue is as follows:

¹ Local 896/COGS is certified to represent a bargaining unit employed at the University of Iowa which consists of all currently enrolled graduate and professional students with a 25% or more appointment (*i.e.*, teaching at least one course or providing service for at least 10 hours per week) as a Teaching Assistant, Research Assistant or Law Research Assistant.

² Thomas Evans, Timothy Cook and Aimee Clayton for the Petitioner and Nate Willems for the Certified Employee Organization.

**ARTICLE XII
FEES REIMBURSEMENT**

Section 1. All bargaining unit employees appointed for a total of twenty-five percent (25%) or more for the entire semester, academic year, or fiscal year will be assured a one hundred percent (100%) mandatory fees reimbursement.

Section 2. All bargaining unit employees appointed for a total of twenty-five percent (25%) or more for the academic year, fiscal year, or spring semester will be assured a one hundred percent (100%) mandatory fees reimbursement for all subsequent summer sessions of that calendar year.

Section 3. All bargaining unit employees appointed for less than a full semester or term shall receive [mandatory]³ fees reimbursement pro-rated to reflect the length of their appointment.

Section 4. All international student bargaining unit employees will receive a one hundred percent (100%) international fee reimbursement.

I. Scope-of-Bargaining Principles

When determining whether a proposal is a mandatory subject of bargaining, the Board uses the two-pronged approach explained in *Waterloo Education Association v. PERB*, 740 N.W.2d 418 (Iowa 2007) (*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. *Id.* at 429. Each topic in section 20.9 is given its common and ordinary meaning, but without defining any so expansively that the other listed topics become redundant. *Id.* at 430. If this test is met, the next inquiry is whether the proposal is preempted or inconsistent with any provision of law. *Id.* at 429. Ordinarily, this two-step process resolves the question of negotiability. *Id.*

³ The proposal as recited in the petition did not include the qualifying term “mandatory.” At oral argument, the parties agreed that the fees referred to in section 3 were the same mandatory fees referenced in sections 1 and 2 of the proposal.

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 Cmty. Sch. Dist. v. PERB*, 275 N.W.2d 766, 769 (Iowa 1979). It is not for PERB to rewrite the proposals at issue. Consequently, the Board takes caution to read the proposals literally. *Clinton Police Dep't Bargaining Unit v. PERB*, 397 N.W.2d 764, 766 (Iowa 1986). PERB must decide whether a 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*, 397 N.W.2d at 766. In order to make that determination, PERB does not merely search for a topical word listed in section 20.9. *State v. PERB*, 508 N.W.2d 668, 675 (Iowa 1993). 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.

II. Application of Scope-of-Bargaining Principles

In order to ascertain the predominant characteristic, topic or purpose of a proposal one examines what the proposal, if incorporated into the collective

agreement, would require the employer to do. *State*, 508 N.W.2d at 673. The proposal at issue in this matter would require the employer to make a payment to bargaining unit employees in an amount equal to the amount of the mandatory student fees which the employee had paid in his or her capacity as a graduate or professional student. In the case of a bargaining unit employee who is also an international student, this payment would also include a sum equal to the international student fee the employee has paid.⁴

An employer's payment of money to an employee could conceivably involve a number of section 20.9 topics. In this case, the parties' arguments focus on the topics of "wages" and "supplemental pay."

The Iowa Supreme Court has employed definitions of "wages" as "[p]ayment for labor or services, usually based on time worked or quantity produced," and "payment for labor or services on an hourly, daily, piecework basis," and has characterized the topic as "an economic reward based upon services rendered." *Waterloo II*, 740 N.W.2d at 430. Supplemental pay, on the other hand, is not a payment for services rendered, but is instead "a payment of money or other thing of value that is in addition to compensation received under another section 20.9 topic and is related to the employment relationship." *Fort Dodge Cmty. Sch. Dist.*, 12 PERB 8512 at 24; *aff'd Fort Dodge Cmty. Sch. Dist. v PERB*, 855 N.W.2d 733 (Ia. Ct. App. 2014).

⁴ That the proposal is far from specific concerning particulars, such as when an employee's reimbursement payment is to be calculated and made, goes to the proposal's merits — a matter for the parties or their selected arbitrator — rather than to its subject matter.

The Proposal as “Wages”

Curiously, although Local 896 argues that its proposal is mandatorily negotiable under the topic of “supplemental pay,” it asserts in both its brief and oral argument that the payment called for by the proposal is made in consideration for the employment services (*i.e.* teaching or research) rendered by the public employees. Such a “payment for services rendered” idea is, of course, the very definition of wages. *See, e.g., Waterloo II*, 740 N.W.2d at 430. If this proposal required a payment in consideration for an employee’s provision of services, it would be held to be a mandatorily negotiable “wages” proposal. However, it does not condition the payment on the employee’s provision of services.

As noted above, the Board reads a proposal literally to determine whether it fits within a section 20.9 mandatory topic. *Clinton Police*, 397 N.W.2d at 766. There is simply nothing in the actual language of this proposal which indicates that the employer’s obligation to make the required payment is triggered by an employee’s provision of services. On its face, the proposal requires the payment not to those who provide services, but instead to those who receive specified appointments. (“All bargaining unit employees appointed for” a specified period receive the required payment.) Under the literal language of this proposal, it is the appointment, rather than the provision of services,

which triggers the payment obligation.⁵ The proposal consequently does not come within the meaning of “wages.”

The Proposal as “Supplemental Pay”

The State acknowledges that the proposal fulfills two of the three elements necessary for it to come within the meaning of supplemental pay: (1) the proposal would require a payment of money or other thing of value and (2) the payments are in addition to compensation received under another section 20.9 topic.

The State argues, however, that the proposal is not mandatorily negotiable as supplemental pay because “the reimbursement of mandatory student fees is in no way related to the employment relationship.” The Board disagrees. The payments contemplated by the proposal are plainly related to the employment relationship. They are, under a literal reading, triggered by the relationship’s very creation – the receipt of an appointment to a bargaining unit position – and are akin to a hiring bonus.

In its brief and argument, the State discusses the concept of student fees and their lack of relationship to the employment at length, emphasizing the legal authority to establish them, their uses and their universal applicability to all students, not just those who are also employed in the bargaining unit. But

⁵ Section 4 of the proposal, unlike sections 1-3, does not explicitly refer to employee appointment. On its face, the payment required by section 4 is triggered simply by being an “international student bargaining unit employee.” But by definition, the bargaining unit employees addressed by the parties’ collective agreement and this proposal have all received an appointment. See Local 896’s certification issued in PERB Case No. 5463 (1996). The difference in language between sections 1-3 and section 4 of the proposal is thus of no consequence. The payment is triggered by the same event in all cases – the employee receiving an appointment to a bargaining unit position.

the whole argument about fees misses the mark. Were the question here whether student fees have a more direct connection with a bargaining unit member's role as a student or as an employee, the Board would likely agree that fees have a closer nexus to the student role. But that is not the question.

For purposes of its negotiability, this proposal, notwithstanding the title of "reimbursement" given it by Local 896, is not really about student fees at all but about the employer's payment of a sum of money which, under this particular proposal, is measured by the amount of student fees the employee has paid. Had the proposal instead measured the required payment by the cost of or amount paid for some other good or service, it would have no impact on the proposal's negotiability. We are not concerned here with whether the *benchmark* upon which the required payment is calculated is related to the employment relationship. Rather, we are concerned with whether the *trigger* that requires payment of money or other thing of value by the employer is related to the employment relationship.

The payments which would be required by this proposal are related to the employment relationship between the unit member and the employer because it is the creation of that relationship which triggers the payment obligation, somewhat similar to a hiring bonus. The proposal is thus within the meaning of "supplemental pay" and meets the first prong of the negotiability test outlined in *Waterloo II*.

The State does not contend that collective bargaining over the proposal would be illegal. Nor is the Board aware of any provision of law which would be violated or preempted by the negotiation or implementation of the proposal.

Accordingly, the Board concludes that the proposal presented here is a mandatory subject of bargaining within the Iowa Code section 20.9 topic of “supplemental pay.”

DATED at Des Moines, Iowa, this 25th day of February, 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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