

STATE OF IOWA  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

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IN THE MATTER OF:

COLUMBUS COMMUNITY SCHOOL DISTRICT,  
Public Employer,

and

COLUMBUS EDUCATION ASSOCIATION,  
Certified Employee Organization/  
Petitioner.

CASE NO. 100820

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RULING ON NEGOTIABILITY DISPUTE

On March 17, 2017, the Columbus Education Association 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 it made during the course of collective bargaining with the Columbus Community School District is a mandatory subject of bargaining.<sup>1</sup> Following both parties' filing of briefs, oral arguments were presented to the Board on April 10, 2017, Gerald Hammond for the Petitioner and Brett Nitzschke for the District.

The proposal at issue is attached as "EXHIBIT 1."

Scope-of-Bargaining Principles

When determining whether a proposal is a mandatory subject of bargaining, the Board uses the two-prongs approach explained in bargaining, the Board uses the two-pronged approach explained in *Waterloo Educ. Ass'n v. PERB*, 740 N.W.2d

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<sup>1</sup>. The Association is certified to represent a bargaining unit employed by the Columbus Community School District which consists of classroom teachers (including part-time teachers under contract), librarians, school nurses and special or remedial education personnel employed by the District. The unit is not a so-called "public-safety" unit, as less than 30 percent of the employees in the unit are "public safety employees" within the meaning of 2017 Iowa Acts, H.F. 291 section 1 (amending Iowa Code section 20.3 (2017)).

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 [mandatorily negotiable] subject listed in Iowa Code section 20.9. *Id.* at 429.

If this test is met, the next inquiry is whether the proposal is preempted or inconsistent with any provision of law. *Waterloo II*, 740 N.W.2d at 429. Ordinarily, this two-step process resolves the question of negotiability. *Id.*

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 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. In order to make that determination, PERB cannot merely search for a topical word listed in section 20.9. *State v. PERB*, 508 N.W.2d 668, 675 (Iowa 1993). Rather, PERB must look to what the proposal, if incorporated through arbitration into the collective bargaining agreement, would bind an employer to do. *State*, 508 N.W.2d at 673; *Charles City Cmty. Sch. Dist.*, 275 N.W.2d at 774. The answer to this inquiry reveals the subject, scope, or predominant characteristic or purpose of the proposal. *Waterloo II*, 740 N.W.2d at 427; *State*, 508 N.W.2d at 673. If the proposal's predominant characteristic, subject or scope is not within a mandatorily negotiable section 20.9 category, and the proposal is not excluded from the scope of bargaining, it is a permissive subject upon which the parties may agree

to negotiate.

2017 Iowa Acts, House File 291

2017 Iowa Acts, House File 291 became effective February 17, 2017, and included amendments to Iowa Code chapter 20 which distinguished bargaining rights for so-called “public-safety” bargaining units versus “non-public-safety” units. Three of the H.F. 291 amendments to chapter 20 are particularly relevant to the negotiability status of the proposal at issue. The first dramatically reduced the subjects of bargaining a party could insist be negotiated for a non-public-safety bargaining unit by eliminating the former laundry list of 18 mandatory subjects and replacing it with the single mandatory subject of “base wages.” Second, H.F. 291 legislatively overruled the Iowa Supreme Court’s holding in *Waterloo II* that mandatory subjects of bargaining be given their common and ordinary meaning by specifically providing that they be interpreted narrowly and restrictively. Third, H.F. 291 added a specific definition of “supplemental pay,” which remains a mandatory subject of bargaining for public-safety bargaining units but is now a subject specifically excluded from the scope of bargaining for non-public-safety units.

Ruling on the negotiability of the proposal at issue here, while also addressing the parties’ arguments, requires us to narrowly and restrictively define the mandatory subject of “base wages” and to interpret the new legislative definition of “supplemental pay.”

Base Wages

“Base wages” is a new topic of bargaining in the context of chapter 20, but

is not defined in H.F. 291. The legislation, however, retained “wages” as a mandatory subject of bargaining for public-safety units. Considering the interpretation which has been given to the meaning of that subject is helpful in interpreting the new mandatory subject of “base wages.”

The Iowa Supreme Court has said “wages” in the context of chapter 20 “involves a specific sum or price paid by an employer in return for services rendered by an employee.” *Charles City Educ. Ass’n v. PERB*, 291 N.W.2d 663, 668 (Iowa 1980). Utilizing a dictionary definition, the Court has also referred to “wages” as “pay, given for labor, usually manual or mechanical, at short stated intervals, as distinguished from salaries or fees, [and denotes] the price paid for labor, especially by the day or week.” *City of Fort Dodge v. PERB*, 275 N.W.2d 393, 396 (Iowa 1979).

Considering the totality of the H.F. 291 amendments to chapter 20, we think it obvious that the legislature intended to significantly narrow the prior scope of bargaining for non-public-safety bargaining units and that the new topic of “base wages” must be given a narrower interpretation than that which has been given to “wages.” PERB and the courts have utilized dictionary definitions to determine the common and ordinary meaning of words used in the statute. *See, e.g., City of Fort Dodge*, 275 N.W.2d 393 (Iowa 1979); *Lenox Cmty. Sch. Dist.*, 87 PERB 3451; *Waterloo Educ. Ass’n*, 740 N.W.2d at 430; *Fort Dodge Cmty. Sch. Dist.*, 12 PERB 8512.

Webster’s definitions of “base” include “the bottom of something considered as its support: FOUNDATION,” “the fundamental part of something:

GROUNDWORK, BASIS” and “the starting point or line for an action or undertaking.” *Merriam-Webster’s Collegiate Dictionary* (10th ed. 1994). See also <https://www.merriam-webster.com/dictionary/base>. In the American Heritage Dictionary of the English Language, the definitions of “base” include “the lowest or bottom part: *the base of a cliff, the base of a lamp*” and “situated at or near the base or bottom: *a base camp for the mountain climbers.*” <https://ahdictionary.com/word/search.html?q=base>. Similarly, the Dictionary.com definition includes “the bottom support of anything; that on which a thing stands or rests: *a metal base for the table,*” and “the bottom layer or coating, as of makeup or paint.” [www.dictionary.com/browse/base?s=t](http://www.dictionary.com/browse/base?s=t).

The common and ordinary meaning of “base” thus reflects the idea that it is the bottom of something. When used in conjunction with “wages” as a term of art, it is logically interpreted as meaning the bottom, lowest or minimum wage for an employee or employees in a given job classification. While dictionary definitions are instructive on the common and ordinary meaning of words, no party to this or any of the other negotiability disputes which have reached us since the effective date of the H.F. 291 amendments has suggested the term be given a narrower interpretation—likely because it is hard to imagine what narrower meaning could be given to it.

Accordingly, we view the mandatory topic of “base wages” as meaning the minimum (bottom) pay for a job classification, category or title, exclusive of additional pay such as bonuses, premium pay, merit pay, performance pay or longevity pay.

### Supplemental Pay

H.F. 291 amended Iowa Code section 20.3 by adding a new subsection 12, defining supplemental pay:

“Supplemental pay” means a payment of moneys or other thing of value that is in addition to compensation received pursuant to any other permitted subject of negotiation specified in section 20.9 and is related to the employment relationship.<sup>2</sup>

As noted previously, supplemental pay remains a mandatory subject of bargaining for public-safety units, but is now excluded from the scope of non-public-safety units such as the one represented by the Association.

Section 20.9, as amended, specifies the mandatory and excluded subjects of bargaining applicable to both public-safety and non-public-safety bargaining units. Seventeen mandatory subjects and three excluded subjects are specified for public-safety units. Only “base wages” is specified as a mandatory subject for non-public-safety units while 10 subjects, including “supplemental pay,” are excluded from bargaining for those units. Non-public-safety units are thus permitted to bargain on the mandatory subject of base wages as well as on a plethora of permissive subjects—those which are neither mandatory nor specifically excluded from bargaining. Some of these permissive subjects are specified in section 20.9. Together with the mandatory subject of “base wages,” these permissive subjects constitute “permitted” subjects for non-public-safety units.

Insurance, transfer procedures, evaluation procedures, procedures for staff

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<sup>2</sup> Although similar to the definition of supplemental pay adopted by PERB in *Fort Dodge Cmty. Sch. Dist. and Fort Dodge Educ. Ass’n et al.*, 12 PERB 8512 and approved by the Iowa Court of Appeals in *Fort Dodge Cmty. Sch. Dist. v. PERB and Fort Dodge Educ. Ass’n et al.*, 855 N.W.2d 733 (Iowa App. 2014), the definitions are not identical in language or effect.

reduction and supplemental pay are not “permitted” subjects for non-public-safety units because they are specifically excluded by section 20.9. But 12 of the specified mandatory subjects for public-safety units—wages, hours, vacations, holidays, leaves of absence, shift differentials, overtime compensation, seniority, job classifications, health and safety matters, in-service training and grievance procedures—are not excluded from bargaining for non-public-safety units. The public employers and representatives of those units are thus permitted to bargain over them, as well as over base wages.

Accordingly, compensation which falls within the meaning of any of these 12 subjects, or within the meaning of “base wages,” is not supplemental pay by definition because such compensation is received pursuant to a permitted subject of bargaining specified in section 20.9.

#### *Positions of the Parties*

The District maintains that the entirety of Exhibit 1 is excluded from the scope of bargaining because it is “supplemental pay.” The Association argues that at least the specification of the compensation for each of the listed extra-curricular roles is within the scope of the mandatory topic of “base wages.”

#### *Discussion*

Although the thrust of the District’s argument is that the proposal is excluded from the scope of bargaining as supplemental pay, its fundamental premise is that the proposal does not come within the meaning of “base wages.”

According to the District, the roles set out in the proposal (Baseball Head Coach, Softball Head Coach, National Honor Society Sponsor/Coordinator, etc.)

are not separate positions included in the Association-represented bargaining unit but instead are “assignments.” Because the bargaining unit described in the Association’s certification (classroom teachers, librarians, school nurses, special or remedial education personnel and part-time teachers under contract) makes no mention of these “assignments,” the District asserts that the pay individuals receive for the performance of those functions is not a base wage, but is instead a payment of money which falls within the meaning of supplemental pay.

We do not view the extracurricular roles listed in Exhibit 1 as merely “assignments.” They are not duties or functions which are simply imposed upon bargaining unit members in the employer’s discretion, but are instead distinct positions/job classifications which involve duties outside the scope of an employee’s role as a teacher, librarian or school nurse. While not controlling, our view is consistent with Iowa Code section 279.19A, which requires school districts employing individuals to coach inter-scholastic athletic sports to issue separate extracurricular contracts to the employed coaches. This suggests to us that the legislature views at least the coaching positions as separate positions/classifications employed by a district.

When a member of the bargaining unit is employed in one of the job classifications listed in Exhibit 1, that coach or sponsor remains a member of the bargaining unit, notwithstanding the absence of any reference to coaches or sponsors/coordinators in the unit’s formal description. A teacher with secondary employment as a coach is still a teacher, and teachers are specifically included within the unit involved here. Individuals who are not members of the bargaining



unit who are retained by the District as coaches or sponsors/coordinators do not, of course, become members of the bargaining unit or become covered by the collective agreement simply by virtue of their employment in an extracurricular job classification.

The compensation which the District would be required to pay a bargaining unit member occupying an extracurricular classification, should Exhibit 1 be included in the parties' collective agreement, fits easily within our definition of "base wages." Because the proposal does not call for placement on a stated pay range based on experience, longevity or some other factor, but instead is expressed as a fixed dollar amount (in this case in two ways—by reference to a percentage of a generator "base" amount as well as by a stated dollar figure) it is a proposal that given job classifications be compensated at a stated minimum pay level. Proposals which simply seek to establish the minimum pay for employees in given job classifications are base wage proposals and are mandatory subjects of bargaining.

Because we view the Exhibit 1 list of extracurricular positions as setting forth distinct job classifications, it is important to note that job classifications are merely a permissive subject of bargaining for non-public-safety units. Accordingly, the District is under no obligation to bargain over whether a given coaching or sponsor/coordinator position will exist. But once the employer creates or maintains an extracurricular classification in which a bargaining unit member may or is to be employed, we hold that the employer has a duty to

bargain the base wage for that classification.<sup>3</sup>

Exhibit 1 also features a closing paragraph combining two topics: the selection of teachers to “work” extracurricular events, and their compensation for doing so. The predominant characteristic of the portion of the paragraph dealing with the selection of extracurricular events is a matter of staffing or assignment, and does not come within the meaning of “base wages.” But because such matters are not excluded from the scope of bargaining for non-public-safety units, this portion of the proposal is a permissive subject of bargaining.

The predominant characteristic of the remainder of the paragraph is the compensation (individual activity pass, family activity pass, cash) to be paid to teachers working events. The District argues that this portion of the proposal is excluded from bargaining as supplemental pay, because it is not “base wages” and therefore represents a payment of money or other thing of value which is in addition to compensation received pursuant to another permitted subject of bargaining specified in section 20.9 and which is related to the employment relationship.

We agree with the District that the Association’s 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 required are related to the employment relationship. However,

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<sup>3</sup> This is akin to PERB’s longstanding view of the boundaries of the bargaining subject of “procedures for staff reduction.” While noting that the decision whether to reduce staff is within the employer’s discretion (as is the case here with the decision whether to establish or maintain a given extracurricular job classification), the way in which the reduction is to be carried out (like the amount of the base wage for an extracurricular classification) is mandatory. See, e.g., *Bettendorf & Dubuque Cmty. Sch. Dists.*, 76 PERB 598 & 602.

we disagree with the District's interpretation of the third element of the definition (that the payment be in addition to compensation pursuant to any other permitted subject specified in section 20.9).

The essence of the District's argument that the proposal is supplemental pay is its view that the only "permitted subject of negotiation specified in section 20.9" for a non-public-safety bargaining unit is the mandatory topic of "base wages." The problem with the District's interpretation, in our view, is that it gives an inappropriately narrow meaning to the new statutory term "permitted subject of negotiation." The District reads that phrase as if it were "mandatory topic for the type of unit involved" (*i.e.*, that there is only one "permitted" subject of negotiation for non-public-safety units). Such a reading would result in rulings that proposals for paid vacations, paid holidays, paid leaves of absence, shift differentials or overtime compensation would be supplemental pay proposals excluded from the scope of bargaining, rather than permissively negotiable vacation, holiday, leave of absence, shift differential or overtime compensation proposals.

We think that if the legislature had intended such a result, it would have used the phrase "mandatory subject for the type of bargaining unit involved," or "applicable mandatory subject" or the like. But it did not. The legislature was, however, plainly aware of the concept of the mandatory subjects of negotiation, for it employed the term in H.F. 291. The fact that it instead used the phrase "permitted subject of negotiation specified in section 20.9" leads us to the conclusion that "permitted" is not limited to "base wages," but also includes the

other subjects specified in section 20.9 (*i.e.*, those that are mandatory subjects for public-safety units) which are not excluded from the scope of bargaining for non-public-safety units.

Although not within the meaning of “base wages,” the compensation which would be required by this portion of the proposal it falls within the permissive subject of “wages,” because it requires a payment, in kind or in cash, in return for services rendered by an employee. “Wages” is a subject of bargaining specified in section 20.9 which is not excluded from the scope of bargaining for non-public-safety units. It is thus a “permitted” subject within the meaning of the section 20.3(12) definition of “supplemental pay.” The compensation which would be received pursuant to this portion of the proposal is thus paid pursuant to the permitted subject of wages, not in addition to it, and is thus not within the definition of supplemental pay. This portion of the proposal is consequently a permissive, rather than excluded subject of bargaining.

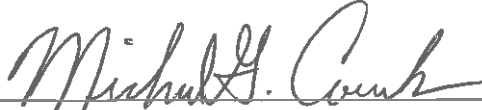
Conclusion

The portions of Exhibit 1 which establish the compensation for bargaining unit members employed in listed extracurricular job classifications which the employer establishes or maintains are a mandatory subject of bargaining, although the existence of the classifications themselves is a permissive subject.

The paragraph at the conclusion of Exhibit 1 concerning how extracurricular activities will be staffed and the compensation of those bargaining unit members who staff them is a permissive subject of bargaining.

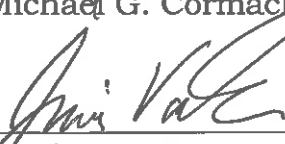
DATED at Des Moines, Iowa, this 17th day of May, 2017.

PUBLIC EMPLOYMENT RELATIONS BOARD



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Michael G. Cormack



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Jamie Van Fossen



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Mary T Gannon

## Schedule C – Co-Curricular – Base \$29,594

<u>Coaching</u>	<u>% of Base</u>	<u>Amount</u>	<u>Sponsor/Coordinator</u>	<u>% of Base</u>	<u>Amount</u>
Baseball 7th Grade	8.00%	\$1,776	Adult Home Ec	2.00%	\$592
Baseball 8th Grade	8.00%	\$2,368	Art Activity Elem	2.50%	\$740
Baseball Asst	10.00%	\$2,959	Art Activity HS	2.50%	\$740
Baseball Head	14.00%	\$4,143	Art Activity JH	2.50%	\$740
Basketball Boys 7th Grade	6.00%	\$1,776	Athletic Trainer	5.00%	\$1,480
Basketball Boys 8th Grade	6.00%	\$1,776	Band HS	11.00%	\$3,255
Basketball Boys Asst	10.00%	\$2,959	Band JH	3.25%	\$962
Basketball Boys Head	14.00%	\$4,143	Band Marching Asst	5.00%	\$1,480
Basketball Girls 7th Grade	6.00%	\$1,776	Band Pep	3.25%	\$962
Basketball Girls 8th Grade	6.00%	\$1,776	Bowling Boys & Girls	1.25%	\$370
Basketball Girls Asst	10.00%	\$2,959	BPA	3.00%	\$888
Basketball Girls Head	14.00%	\$4,143	Cheerleading Basketball FS	1.50%	\$444
Cross Country Boys & Girls	14.00%	\$4,143	Cheerleading Basketball Varsity	4.00%	\$1,184
Cross Country Asst	10.00%	\$2,959	Cheerleading Football FS	1.50%	\$444
Cross Country JH	6.00%	\$1,776	Cheerleading Football Varsity	2.50%	\$740
Football 7th Grade	6.00%	\$1,776	Cheerleading Basketball JH	1.25%	\$370
Football 8th Grade	6.00%	\$1,776	Cheerleading Football JH	1.25%	\$370
Football Asst	10.00%	\$2,959	Cheerleading Wrestling JH	1.25%	\$370
Football Head	14.00%	\$4,143	Cheerleading Wrestling HS	4.00%	\$1,184
Golf Boys	10.00%	\$2,959	Choreographer	4.00%	\$1,184
Golf Girls	10.00%	\$2,959	Close Up	0.75%	\$222
Soccer Boys Head	14.00%	\$4,143	Communications	2.50%	\$740
Soccer Girls Head	14.00%	\$4,143	Music	8.00%	\$2,368
Soccer Girls Assistant	10.00%	\$2,959	Danceteam	2.00%	\$592
Softball 7th Grade	6.00%	\$1,776	Drama	5.00%	\$1,480
Softball 8th Grade	8.00%	\$2,368	FCCLA	3.00%	\$888
Softball Asst	10.00%	\$2,959	FFA	3.00%	\$888
Softball Head	14.00%	\$4,143	Homecoming	1.10%	\$326
Track Boys 7th Grade	6.00%	\$1,776	National Honor Society	1.85%	\$488
Track Boys 8th Grade	6.00%	\$1,776	Newspaper	3.25%	\$962
Track Boys Asst	10.00%	\$2,959	Prom	3.00%	\$888
Track Boys Head	14.00%	\$4,143	Quiz Bowl HS	1.25%	\$370
Track Girls 7th Grade	6.00%	\$1,776	Rhythm Club	5.00%	\$1,480
Track Girls 8th Grade	8.00%	\$1,776	Science & Math Club	2.75%	\$814
Track Girls Asst	10.00%	\$2,959	Speech Asst	5.00%	\$1,480
Track Girls Head	14.00%	\$4,143	Speech/Debate	5.00%	\$1,480
Volleyball 7th Grade	6.00%	\$1,776	Sponsor Freshman Class	1.50%	\$444
Volleyball 8th Grade	6.00%	\$1,776	Sponsor JH	0.30%	\$89
Volleyball Asst	10.00%	\$2,959	Sponsor Junior Class	1.50%	\$444
Volleyball Head	14.00%	\$4,143	Sponsor Senior Class	2.00%	\$592
Wrestling 7th & 8th Grade	8.00%	\$2,368	Sponsor Sophomore Class	2.00%	\$592
Wrestling Asst	10.00%	\$2,959	Student Council HS	1.85%	\$488
Wrestling Head	14.00%	\$4,143	Student Council JH	0.75%	\$222
			Vocal HS	11.00%	\$3,255
			Vocal JH	3.25%	\$962
			Yearbook	8.00%	\$2,368
	base of:	\$29,594			

\*\*\*All teachers will work a minimum of one (1) event, but will not be required to work more than one (1) event Teachers working one (1) event will receive an individual activity pass. Teachers choosing not to receive a family activity pass will be compensated at the rate of \$40 per event after the initial one (1) event or after three (3) events if choosing a family activity pass. The initial one (1) to three (3) events worked will be self-selected as long as the individual is qualified to work the event. Certified staff shall have the first choice of an unlimited number of events before non-certified staff, up to a week before the first home event.