STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF:	)	
	)	
GREENE COUNTY COMMUNITY SCHOOL DISTRICT,	)	
Public Employer,	)	
	)	
and	)	CASE NO. 100828
	)	
CONSTRUCTION AND PUBLIC EMPLOYEES LiUNA LOCAL 177,	)	
Certified Employee Organization/ Petitioner.	)	

RULING ON NEGOTIABILITY DISPUTE

On May 9, 2017, Construction and Public Employees LiUNA Local 177 filed a petition for the expedited resolution of a negotiability dispute which arose in the course of the parties' negotiations following the enactment and effective date of 2017 Iowa Acts, House File 291. The parties' dispute is presented in the form of provisions of their 2016-17 collective agreement. The Local 177-represented unit affected is a so-called "non-public-safety" unit where less than 30 percent of the included employees are "public safety employees" within the meaning of H.F. 291, section 1.

Local 177 filed a brief on June 7, 2017. Oral arguments on the questions posed by the petition were presented to the Board on June 12, 2017 by telephone conference call, Michael Amash and Thomas Hayes for Local 177 and Tim Christensen for the District. What we will refer to as Local 177's "proposal," (*i.e.*, the disputed portions of the parties' 2016-17 agreement) is

comprised of the following language, as well as the entire content of the attached Appendix:

ARTICLE IV: WAGES

. . .

B. Activity trip pay and pay for other in District driving, HS EBCE driving shall be fourteen dollars and ninety-two cents ($15.22)[sic] per hour. If a regular route driver drives an activity trip (and misses his/her regular route) the driver will be paid the regular route pay for the first 1.25 hours and $15.22 per hour thereafter for the remainder of the trip.

C. In-town shuttles shall be paid ten dollars ($10) per shuttle.

D. Scranton and Grand Junction shuttles shall be paid forty dollars ($40) per day or twenty dollars ($20) per shuttle.

. . .

F. Payments for attendance at license recertification will be for a maximum of three hours at fourteen dollars and ninety-two cents ($15.22)[sic] per hour.

G. Paychecks. Pay dates are monthly (twelve paychecks or by direct deposit).

. . .

J. Sport driving (aka sports shuttles) shall be paid as past practice, which is minimum of two (2) hours pay at the fourteen dollars and ninety-two cents ($14.92) pay rate plus any additional driving time wage.

Scope-of-Bargaining Principles

When determining whether a proposal is a mandatory subject of bargaining, PERB uses the two-pronged approach explained in *Waterloo Educ. Ass'n 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 [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 a proposal's subject matter and not its merits. *Charles City Cmty. Sch. Dist. v. PERB,* 275 N.W.2d 766, 769 (Iowa 1979). PERB must decide whether a proposal 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, we do not merely search for a topical word listed in section 20.9. *State v. PERB,* 508 N.W.2d 668, 675 (Iowa 1993). Rather, we 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.

Positions of the Parties

The District concedes that the per-year/-day/-route dollar amounts shown on the Appendix for Regular Route and Pre-Kindergarten Route drivers

are mandatorily negotiable as "base wages." It maintains, however, that Article IV, paragraphs B, C, D, F, G and J, and the dollar amounts for all of the other so-called "job classifications" shown on the Appendix are excluded from the scope of bargaining as "supplemental pay." Local 177 maintains that the entirety of its proposal is mandatory because it is within the topic of "base wages."

Discussion

In *Columbus Cmty. Sch. Dist.*, 17 PERB 100820, we defined the new mandatory bargaining subject of "base wages" as "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." Application of this definition thus necessarily involves the question of whether the proposed compensation is for services performed by a distinct position/category/job classification. Accordingly, in *Columbus*, we determined that regular, ongoing extracurricular roles filled by specific bargaining unit employees, such as those of coaches or activity sponsors or coordinators, were distinct positions/job classifications, and that the employee organization's proposal that they be compensated in a specified amount was thus a mandatorily negotiable "base wages" proposal.

But we reached a different conclusion concerning the portions of the employee organization's proposal specifying the compensation to be paid bargaining unit employees electing to staff extracurricular events on an occasional basis—holding that the compensation proposed for the performance

of these occasional functions was not base wages because those functions were not those of a distinct position/job classification. Inherent in this ruling was the idea that bargaining unit employees who choose to serve at times as ticket-takers, concession-stand workers and the like at extracurricular events were not, unlike coaches and activity sponsors or coordinators, employed in distinct job classifications.

Neither the portions of Article IV quoted above, nor the Appendix, answer the question of whether "Bus Driver—In-Town Shuttles," "Bus Driver—Scranton, Grand Junction and Rippey Shuttles," "Shuttles Out of the City limits," "Sports Shuttles," "Activity Driving," "In-district driving" and "HS EBCE Driving" are themselves distinct job classifications, or whether these are merely occasional tasks which unit members may elect to perform for compensation in addition to their base wage for the job classification they occupy. However, as was the case in our recent declaratory order in *United Electrical, Radio and Machine Workers of America,* 17 PERB 100825, during oral arguments the parties provided us with background facts concerning the nature of these roles which we think are sufficient to allow us to resolve the negotiability issues presented.

Based upon these representations, it appears to be undisputed that in-town shuttles, shuttles outside the city limits, sports shuttles, activity driving, in-district driving and HS EBCE driving are not required of any bargaining unit employee and are not a part or the whole of any employee's established duties. Instead, during weekly meetings between transportation directors and

bargaining unit employees, the employees are informed of these upcoming driving opportunities, and are given the opportunity to sign up (or not) to perform a particular task or tasks on a particular date or dates.

This situation is analogous to that of the teachers in *Columbus* who choose to staff extracurricular events. As with those teachers, driving in-town shuttles, sports shuttles, activity events, etc. on an occasional basis is not a requirement for any unit employees. These services, rendered by bargaining unit employees on occasion should they opt to do so, are not distinct jobs/positions/job classifications. Their short-term occasional nature, as well as the employee's ability to perform them at times but not at others, distinguish them from the season-long or year-long coaching, sponsor and coordinator functions which we found to constitute distinct job classifications in *Columbus*. The fact that the parties have listed these optional functions in a column of the Appendix under the heading of "Job Classification" is not relevant, much less dispositive, especially in view of the reality that no employee is required to perform any of these roles as a part of or as the totality of their employment duties.

But as we indicated in *Columbus*, the fact that Local 177's proposal calls for the payment of a specific sum of money to employees for their occasional performance of these functions does not mean this aspect of its proposal is excluded from the scope of bargaining as "supplemental pay," as the District maintains. The compensation which would be required by these portions of Local 177's proposal falls within the permissive subject of "wages" (a payment in

return for services rendered by a bargaining unit employee. *See, e.g., Waterloo Educ. Ass'n v. PERB*, 740 N.W.2d 418 (Iowa 2007)).

"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 these portions 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. The portions of the proposal which would establish the compensation for employees performing these roles are consequently a permissive, rather than excluded, subject of bargaining, as are paragraphs B, C and J of Article IV, which address the same subject matter.

We reach a different conclusion, however, concerning the portion of Local 177's proposal concerning "Bus Driver—Scranton, Grand Junction and Rippey Shuttles." The parties' representations during oral arguments make it clear that the employees performing these roles are employed in a distinct job classification where the assigned employee drives a regular route to a set destination and then transports students who have been assembled there to the their final destination, and then reverses the process at the end of the students' day. This extra "shuttling" of students to and from an interim assembly point is a required, regular function of these employees' jobs, rather than an occasional and optional one such as a sport shuttle or activity trip. In every sense, it is a

separate "regular-route-plus" job classification which involves the duties of a regular route driver plus the to-and-from shuttle function.

Local 177's proposal expresses what we thus conclude is a mandatory base wage for these positions by reference to separate dollar figures (the base wage for a regular route driver plus a stated amount for employees occupying these "plus" positions). But regardless of how the base wage is expressed by the parties in their contract, the predominant characteristic of the proposal is the base wage for a distinct job classification, which the District has a mandatory duty to negotiate. Accordingly, we also conclude that the language of Article IV, paragraph D, is a mandatory subject of bargaining because it expresses a component of the base wage for employees in this "plus" classification. The fact that the paragraph is redundant in view of the content of the Appendix does not affect its predominant characteristic or its negotiability status, and whether both expressions of the base wage for the classification are included in the parties' collective agreement or not is a matter for the parties or an Iowa Code section 20.22 arbitrator to determine.

Article IV, paragraph F of Local 177's proposal would require the District to compensate bargaining unit employees at a stated hourly rate for their attendance at "license recertification." The parties agree that school bus drivers are required by law to hold a driver's license valid for the operation of a school bus, and that thereafter, periodic completion of an approved education course of instruction for school bus drivers must be completed in order to avoid revocation of the employee's authorization to operate a school bus. *See* Iowa

Code section 321.376(3), requiring drivers to complete such courses within the first six months of employment and at least every 24 months thereafter. This continuing education requirement is the "license recertification" referenced in paragraph F of the proposal.

The payment which would be required by this paragraph does not fall within the subject of base wages as we have defined it. Not all drivers in any of the three classifications we have identified are required to complete the course of instruction every year. The payment contemplated here is something in excess of the base wage for the classification occupied by a given driver, and Article IV, paragraph F is thus not a mandatory subject of bargaining. The question thus becomes whether paragraph F is a permissive or excluded subject of bargaining—an issue which requires application of the section 20.3(12) definition of the excluded subject of "supplemental pay."

The payment that paragraph F would require plainly fulfills two of the three elements of the definition of supplemental pay because it is a payment of money which is related to the employment relationship. Whether it is excluded from the scope of bargaining as supplemental pay, or is a permissive subject, turns on whether the payment "is in addition to compensation received pursuant to any other permitted subject of negotiation specified in section 20.9." *See* § 20.3(12). We conclude that the payment sought by this paragraph of the proposal does not fall within the meaning of any of those permitted subjects, but is instead in addition thereto.

The payment sought is plainly not within the meaning of the permitted subjects of hours, vacations, holidays, leaves of absence, shift differentials, overtime compensation, seniority, job classifications, health and safety matters, in-service training or grievance procedures. Consequently, the proposal is a permissive subject only if it falls within the meaning of the permitted subject of "wages."

Wages is payment in return for labor or services, usually based on time worked or quantity produced. *Waterloo Educ. Ass'n v. PERB*, 740 N.W.2d at 430. The payment which would be required here, unlike the payments which the proposal would require for sports shuttles, activity driving and the like, is not in exchange for labor or services provided to the District by the employee.

An employee's compliance with statutory licensing requirements, whether as a teacher, nurse, attorney, school bus driver, physician or a myriad of other occupations, is a qualification for employment in that licensed profession or occupation. Only in the remotest sense does an employee obtaining or maintaining a minimum qualification for employment provide a service to the employer. Obtaining or maintaining the authority to operate a school bus is a prerequisite to an individual's ability to provide a service, and not a service itself. We share the view expressed by the Iowa Supreme Court in *Prof. Staff Ass'n of AEA 12 v. PERB*, 373 N.W.2d 516 (Iowa 1985) when it rejected an employee organization's argument that a proposal for payment for unused sick leave upon termination was "wages" because the employee provides a service by not taking sick leave. We think any argument that maintaining a qualification

for employment is the performance of a service to the employer, like the claim that not using sick leave is the provision of a service, "stretches the meaning of service and is not what the legislature intended." *Id.* at 518

Consequently, because Article IV, paragraph F would require the payment of money related to the employment relationship which would be in addition to compensation received under any permitted subject specified in section 20.9, it comes within the meaning of "supplemental pay" and is an excluded subject of bargaining.

Article IV, paragraph G of the proposal would require the District to pay employees by 12 monthly payments, either by check or direct deposit. Bargaining as to the subject of wages encompasses all of the fundamental aspects of wage payment, such as the time and place thereof. *Waterloo Cmty. Sch. Dist. v. PERB,* 650 N.W.2d 627, 634 (Iowa 2002). We have recently held that the same reasoning applies equally to the payment of base wages. *United Electrical, Radio & Machine Workers of America,* 17 PERB 100825 at 9-10. Article IV, paragraph G is consequently a mandatory subject of bargaining.

Finally, we address the three unnumbered paragraphs which appear at the end of the Appendix. Each defines different terms which appear in the Appendix and the text of Local 177's proposal. None propose a base wage for any job classification, nor is the subject of any within the meaning of any excluded subject of bargaining. Accordingly, all three paragraphs are permissive subjects of bargaining.

We note, however, that the first and third paragraphs define "route" and "shuttle"—terms which are relevant to the job classifications we have identified, for which the District is under a mandatory obligation to negotiate a base wage. Both of these paragraphs relate to the duties which these classifications are to perform.

In *United Electrical, Radio & Machine Workers* we recognized that although the existence of job classifications and matters relating to the extent of the work which is to be performed in exchange for employees' base wages are permissive subjects of bargaining, employee organizations need not bargain base wages in a vacuum, completely unaware of the extent of the work which is to be required of employees in exchange for their base wages. Consequently, we held that when a public employer is confronted with proposals which are premised on the existence of certain conditions of employment, the employer has an affirmative obligation as part of its duty to negotiate in good faith to inform the employee organization whether those job classifications and conditions of employment will exist for the term of the agreement being negotiated, and if so, the quantity or extent of those the employer will provide in its discretion. *United Electrical,* 17 PERB 100825 at 12-13.

This concept is equally applicable to the nature of the work to be performed in exchange for an employee's base wage. The first and third paragraphs at the conclusion of the Appendix relate to the duties to be performed by job classifications for which the District has a mandatory duty to bargain a base wage. They form an underlying premise for Local 177's base

wage proposals, and the District has an affirmative good-faith obligation to inform Local 177 whether the assumptions concerning the work to be performed which are inherent in those paragraphs are accurate or not, and if not, what duties will be required of employees in the job classifications we have identified.

DATED at Des Moines, Iowa, this 16th day of August, 2017.

PUBLIC EMPLOYMENT RELATIONS BOARD

Michael G. Cormack

Jamie K. Van Fossen

Mary T. Gannon

2016-2017 SALARY SCHEDULE
Transportation Staff

Job Classification	Starting Hourly Rate 2016-2017
Bus Driver – Regular Route	$16,749.90/year $93.07/day $46.54/route
Bus Driver – Pre-Kindergarten Route	$4,285.51/year $29.77/day
Bus Driver – In-town Shuttles	$10.00/Shuttle
Bus Driver – Scranton, Grand Junction and Rippey Shuttles	 $40.00/day $20.00/Shuttle
Shuttles Out of the City limits Sports Shuttles	$15.22Shuttle $15.22/hour minimum of two (2) hrs
Hourly Wage: Activity Driving In-district driving HS EBCE Driving	$15.22/hour $15.22/hour $15.22/hour

*The term "route" as used in this Agreement, shall mean a regular (more than once a week) schedule between a students' home and school(s) and/or school(s) and home.

*The term "trip" or "out-of-district trip" as used in this Agreement shall mean a non-routine driving assignment transporting persons between two or more locations.

*The term "shuttle" as used in this Agreement shall mean a transport back and forth or to and from with or without intermediate stops between "school" locations.