STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

RENEE V. SNEITZER, Appellant,	)	
and	)	CASE NO. 102064
STATE OF IOWA (DEPARTMENT OF CORRRECTIONS), Appellee.	)	

ORDER

Pursuant to Iowa Code section 8A.415(2), Appellant Renee V. Sneitzer filed this State employee disciplinary action appeal with the Public Employment Relations Board (PERB or Board), alleging that the suspension imposed upon her by the Iowa Department of Corrections was without just cause. Subsequent to her filing, the Board was advised that Sneitzer's position is included within what is commonly referred to as the "Professional Fiscal & Staff" bargaining unit of State employees represented by AFSCME Iowa Council 61, and is covered by the collective bargaining agreement (CBA) between those parties effective July 1, 2017 through June 30, 2019.

By order filed October 5, 2017, the Board notified the parties that PERB has interpreted section 8A.415(2) as unambiguously limiting disciplinary action appeals to merit system employees who are not covered by a collective bargaining agreement. Because Sneitzer is covered by such an agreement, PERB doubted its authority to adjudicate her appeal, notwithstanding the Department of Administrative Services' third-step response to her grievance.

The Board determined that it would receive and consider arguments or authorities from the parties prior to taking further action on Sneitzer's appeal.

Pursuant to the order, the parties presented oral arguments to the Board on October 25, 2017. Appellant Sneitzer was represented by Attorney Mark Hedberg and the Appellee, the State of Iowa and the Department of Administrative Services (collectively referred to as DAS), was represented by Jeff Edgar. Both parties submitted briefs prior to arguments. Based on our analysis and grounds other than those propounded by the parties, we conclude PERB has jurisdiction over Sneitzer's Iowa Code section 8A.415(2) state merit employee disciplinary action appeal.

Background.

Iowa Code section 8A.415(1) provides grievance procedures for state merit employees to challenge the State's substantial compliance with DAS rules or subchapter IV of Iowa Code chapter 8A.[1] Iowa Code section 8A.415(2) provides discipline resolution procedures for state merit employees to challenge disciplinary action they assert is without just cause. In both types of proceedings, if the employee is not satisfied with the DAS Director's response, the state merit employee may appeal the case to PERB. However, each proceeding excludes certain state merit employees from the state merit system procedures set forth in its respective section; section 8A.415(1) excludes employees covered by a collective bargaining agreement which provides otherwise and section 8A.415(2) has a broader exclusion by excluding all

[1] All references are to Iowa Code (2017). All chapter 20 references are to Iowa Code (2017) as amended by 2017 Iowa Acts, House File 291.

employees covered by a collective bargaining agreement regardless of whether the agreement "provides otherwise." Thus, PERB's jurisdiction is limited by the exclusions set forth in each section of 8A.415.

In recent history leading up to Sneitzer's appeal, there has not been a section 8A.415(2) disciplinary action appeal filed with PERB by a state merit employee covered by a collective bargaining agreement—with grievance procedures or one without. Consequently, PERB's jurisdiction over section 8A.415(2) disciplinary action appeals for state merit employees covered by a collective bargaining agreement has not been an issue as of late.[2] Our assumption has been those state merit employees covered by collective bargaining agreements have had alternative grievance procedures provided by their contracts. Presumably, these agreements contained grievance provisions that included the ability to grieve discipline and discharge and ultimately proceed to grievance arbitration if not satisfied, which is the equivalent of PERB evidentiary hearings for 8A.415(2) state merit employee disciplinary action appeals. In fact, we are aware of some state collective bargaining agreements having discipline and discharge grievance procedures as early as

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[2] *But see* caselaw involving both types of proceedings where the State's motion to dismiss was granted upon a finding PERB was without jurisdiction to hear the merit appeal based on the employee's coverage by a collective bargaining agreement: *Brown and State of Iowa*, 97 MA 16 (ALJ, Iowa Code § 19A.14(2)); *Deats and State of Iowa*, 93 MA 19 (Board, Iowa Code § 19A.14(1)); and *Ekern and State of Iowa*, 92 MA 14 (ALJ, Iowa Code § 19A.14(1)). PERB was given jurisdiction to adjudicate merit appeals in 1987 when the department of personnel (IDOP) was established pursuant to Iowa Code chapter 19A (1987). Chapter 19A was later repealed and IDOP was replaced with the department of administrative services (DAS) pursuant to Iowa Code chapter 8A (2003 Supp.).

July 1, 1979.[3]

However, all that changed with the passage of 2017 Iowa Acts, House File 291 and its amendments to Iowa Code chapter 20 effective February 17, 2017. House File 291 amended Iowa Code section 20.9 and made the mandatorily negotiable subject of "grievance procedures for resolving any questions arising under the agreement" an excluded subject of bargaining for non-public-safety units. This affected most state employee bargaining units that are now considered non-public-safety units under the amended statute and whose certified bargaining representatives were in the midst of negotiating new collective bargaining agreements with the State at the time H.F. 291 was enacted. After the passage of H.F. 291 and in negotiations for new agreements effective July 1, 2017 to June 30, 2019, the State removed grievance procedure provisions from some of these state collective bargaining agreements. As a result, in the absence of grievance procedures provided by their collective bargaining agreements, state merit employees such as Sneitzer has turned to section 8A.415(2) "discipline resolution" procedures with DAS and PERB (following a third-step answer) for redress of discipline and discharge they allege to be without just cause.

Sneitzer was the first such state merit employee to file a section 8A.415(2) disciplinary action appeal with PERB despite being "covered by a collective bargaining agreement." DAS asserts that PERB has jurisdiction over Sneitzer and similarly situated state merit employees. DAS processed and

[3] The State of Iowa and AFSCME were parties to these early collective bargaining agreements that covered various bargaining units of state employees.

responded to Sneitzer's grievance. When DAS denied Sneitzer's grievance at third-step, she appealed her grievance to PERB.

Applicable Statute.

Iowa Code section 8A.415 sets forth grievance and discipline resolution procedures for state merit employees and provides in relevant part:

> **8A.415 Grievances and discipline resolution procedures.**
> 1. *Grievances.*
> *a.* An employee, except an employee covered by a collective bargaining agreement which provides otherwise, who has exhausted the available agency steps in the uniform grievance procedure provided for in the department rules may, within seven calendar days following the date a decision was received or should have been received at the second step of the grievance procedure, file the grievance at the third step with the director. The director shall respond within thirty calendar days following receipt of the third step grievance.
> *b.* If not satisfied, the employee may, within thirty calendar days following the director's response, file an appeal with the public employment relations board. The hearing shall be conducted in accordance with the rules of the public employment relations board and the Iowa administrative procedure Act, chapter 17A. Decisions rendered shall be based upon a standard of substantial compliance with this subchapter and the rules of the department.
> ...
> *c.* For purposes of this subsection, "uniform grievance procedure" does not include procedures for discipline and discharge.
> 2. *Discipline resolution.*
> *a.* A merit system employee, except an employee covered by a collective bargaining agreement, who is discharged, suspended, demoted, or otherwise receives a reduction in pay, except during the employee's probationary period, may bypass steps one and two of the grievance procedure and appeal the disciplinary action to the director [of the Department of Administrative Services] within seven calendar days following the effective date of the action. The director shall respond within thirty calendar days following receipt of the appeal.
> *b.* If not satisfied, the employee may, within thirty calendar days following the director's response, file an appeal with the public employment relations board. ... The hearing shall otherwise be conducted in accordance with the rules of the public employment

> relations board and the Iowa administrative procedure Act, chapter 17A. If the public employment relations board finds that the action taken by the appointing authority was for ... reasons not constituting just cause, the employee may be reinstated without loss of pay or benefits for the elapsed period, or the public employment relations board may provide other appropriate remedies. ...

(Iowa Code 2017) (Emphasis added).

Parties' Positions.

We have not read section 8A.415(2) in the same manner as DAS and Sneitzer. Unlike the grievance procedures set forth in section 8A.415(1) that narrowly exclude only employees covered by a collective bargaining agreement "which provides otherwise," the disciplinary action procedures set forth in section 8A.415(2) broadly excludes all employees covered by a collective bargaining agreement and does not contain the same qualifying language of "which provides otherwise." Thus, we have read the plain language of section 8A.415(2) as unambiguously limiting disciplinary action appeals to only merit system employees who are not covered by a collective bargaining agreement—regardless of whether the agreement is one "which provides otherwise" (with grievance procedures for discipline and discharge).

Both parties interpret section 8A.415(2) as authority for PERB's jurisdiction over all disciplinary action appeals brought by state merit employees who are covered by a collective bargaining agreement when the agreement does not provide an alternative recourse. The parties assert that PERB has incorrectly interpreted section 8A.415(2) in an overly narrow and isolated reading of that section rather than in the context of the statute as a whole. They argue that PERB's interpretation of section 8A.415(2) is

inconsistent with the purpose and principles of other merit system provisions set out in the statute, Iowa Code chapter 8A, as well as provisions in the other relevant statute, Iowa Code chapter 20. Relevant provisions cited provide in part:

> **8A.411 Merit system established — collective bargaining — applicability.**
> 1. The general purpose of this subchapter is to establish for the state of Iowa a system of human resource administration based on merit principles and scientific methods to govern the ... layoff, removal, and discipline of its civil employees ... .
> 2. It is also the purpose of this subchapter to promote the coordination of personnel rules and policies with collective bargaining agreements negotiated under chapter 20.
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> . . . .
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> **8A.413 State human resource management — rules.**
> The department shall adopt rules for the administration of this subchapter pursuant to chapter 17A. Rulemaking shall be carried out with due regard to the terms of collective bargaining agreements. A rule shall not supersede a provision of a collective bargaining agreement negotiated under chapter 20. ... The rules shall provide:
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> . . . .
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> 19. For establishment of a uniform plan for resolving employee grievances and complaints. Employees who are subject to contracts negotiated under chapter 20 which include grievance and complaint provisions shall be governed by the contract provisions.
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> . . . .
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> **20.18 Grievance procedures.**
> 1. An agreement with an employee organization which is the exclusive representative of public employees in an appropriate unit may provide procedures for the consideration of public employee and employee organization grievances over the interpretation and application of agreements. ...
> 2. Public employees of the state or public employees covered by civil service shall follow either the grievance procedures provided in a collective bargaining agreement, or in the event that grievance procedures are not provided, shall follow grievance procedures established pursuant to chapter 8A, subchapter IV, or chapter 400, as applicable.

The parties maintain that interpreting section 8A.415(2) in an overly restrictive manner as PERB has done ignores the express intent of the legislature to provide an avenue of grieving disciplinary action for all state merit employees. Both parties assert PERB's interpretation of its jurisdiction pursuant to section 8A.415(2) produces an absurd result of leaving contract-covered state merit employees without recourse to grieve disciplinary action.

Additionally, the State asserts that based on PERB's narrow interpretation and prior caselaw, one could argue that these same contract-covered employees would only be excluded from bypassing steps one and two of the grievance procedure and appealing the disciplinary action directly to the DAS director. However, they would not be precluded from filing the grievance at step one and advancing the grievance through the steps and ultimately appeal the grievance to PERB.[4] The State argues this is an absurd result where a group of employees may be categorically excluded from the disciplinary action appeal process, but would be able to avail themselves of those same appeal rights through the normal grievance procedure.

Both parties seemingly suggest that PERB should employ rules of statutory construction to interpret section 8A.415(2) in a manner that is consistent or harmonizes with other relevant statutory provisions and avoids the absurd result of leaving contract-covered state merit employees without recourse to grieve discipline and discharge.

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[4] *See, e.g., Frost and State of Iowa*, 07 MA 01, 02 (PERB 2010).

Analysis.

PERB must have statutory authority to hear and adjudicate section 8A.415(2) state merit employee disciplinary action appeals such as Sneitzer's appeal. Administrative agencies possess no inherent power and have only such authority as is conferred by statute or is necessarily inferred from the power expressly granted. *Zomer v. West River Farms, Inc.*, 666 N.W.2d 130, 132 (Iowa 2003). Thus, to determine whether PERB has jurisdiction to hear and adjudicate a particular case, its statutory grant of authority must be examined. PERB's statutory authority is derived from section 8A.415(2) in conjunction with section 20.1(2)(*d*), which provides that the powers and duties of PERB include but are not limited to "[a]djudicating ... state merit system grievances ... ."

Before examining 8A.415(2) to determine the scope of our jurisdiction, we begin with a brief review of the principles of statutory construction. In statutory analysis, our goal is to give effect to the intent of the legislature. *Auen v. Alcoholic Beverages Div.*, 679 N.W.2d 586, 590 (Iowa 2004). We determine legislative intent from the words chosen by the legislature, not what it should or might have said. *Schadendorf v. Snap-On Tools Corp.*, 757 N.W.2d 330, 337 (Iowa 2008). If statutory language, given its plain and rational meaning, is precise and free from ambiguity, no more is necessary than to apply to the words used their natural and ordinary sense in connection with the subject considered, and the tribunal is not permitted to write into the statute words which are not there. *Dingman v. City of Council Bluffs*, 249 Iowa 1121, 90

N.W.2d 742 (1958). We cannot, under the guise of construction, enlarge or otherwise change the terms of the statute as the legislature adopted it. *Marcus v. Young*, 538 N.W.2d 285, 289 (Iowa 1995).

Thus, we must determine whether section 8A.415(2) is ambiguous to warrant the application of rules of statutory construction to aid in our interpretation. Rules of statutory construction are to be applied only when the explicit terms of a statute are ambiguous. *Carolan v. Hill*, 553 N.W.2d 882, 887 (Iowa 1996). A statute is ambiguous if reasonable minds could differ or be uncertain as to the meaning of the statute. *Mall Real Estate, L.L.C. v. City of Hamburg*, 818 N.W.2d 190, 198 (Iowa 2012). Ambiguity may arise in two ways: (1) from the meaning of particular words; or (2) from the general scope and meaning of a statute when all its provisions are examined. *Carolan,* 553 N.W.2d at 887.

Section 8A.415(2) is not ambiguous when read in the context of the statute in its entirety and the other relevant statutory provision, section 20.18(2). In both chapters 8A and 20, statutory language reflects legislative awareness that collective bargaining agreements may not always provide grievance procedures. Sections 8A.413(19) and 20.18(2) recognize those instances and provide for the availability of grievance procedures through the merit system or through collective bargaining agreements if grievance procedures are provided. Deference is given to contractual grievance procedures if they exist, but the provisions clearly allow contract-covered merit employees the benefit of chapter 8A merit system grievance procedures if their

agreements do not contain grievance procedures. Section 8A.415(1) is consistent with these other statutory provisions and has a narrowly tailored exclusion for employees who are covered by a collective bargaining agreement "which provides otherwise."

In contrast to section 8A.415(1), there is the glaring absence of similar language in section 8A.415(2) to recognize instances where the collective bargaining agreement may not provide grievance procedures. Instead section 8A.415(2) broadly excludes all state merit employees covered by a collective bargaining agreement. Language that would narrowly tailor the exclusion cannot be wrenched from section 8A.415(2). We must assume the legislature intended the broad exclusion set forth in section 8A.415(2). "In our search for legislative intent, we are guided by what the legislature said, rather than what it should or might have said." *Carolan*, 553 N.W.2d at 887.

The plain and rational meaning of section 8A.415(2) excludes state merit employees who are covered by a collective bargaining agreement regardless of whether the agreement provides grievance procedures. There is no ambiguity. Therefore, in an absence of finding an ambiguity, rules of statutory construction are not applicable to interpret section 8A.415(2) in any other manner than its plain and rational meaning.[5] Nonetheless, we are persuaded by the parties that the plain and rational reading of section 8A.415(2) would

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[5] Had the rules of statutory construction applied, the parties should note the legislative history of section 8A.415(2) supports PERB's interpretation. Section 8A.415(2) once contained the same narrowly tailored language as section 8A.415(1) and excluded "any employee covered under a collective bargaining agreement which provides otherwise ... ." In 1998, the legislature specifically removed the phrase, "which provides otherwise," from section 8A.415(2). Iowa Code (1999).

produce an absurd result of leaving contract-covered state merit employees without recourse to grieve discipline and discharge. While this may not have been the case in previous years, it is the result after H.F. 291 changed the landscape for grievance procedures which were once contained in collective bargaining agreements. Based on the purpose and principles of Iowa Code chapter 8A and section 20.18(2), it is evident that the legislature never intended to leave any state merit employee without some avenue of recourse to grieve disciplinary action. Under the circumstances of the current landscape, the invocation of the absurdity doctrine is warranted to avoid this absurd, but unintended result.

We distinguish our invocation of the absurdity doctrine from finding section 8A.415(2) ambiguous and employing rules of construction to avoid absurd results. Section 8A.415(2) is not ambiguous, but its literal application produces absurd results. "Under the absurdity doctrine, a court declines to follow the literal terms of the statute to avoid absurd results." *Brakke v. Iowa Dep't of Natural Res.*, 897 N.W.2d 522, 534 (Iowa 2017); *see* 2A Norman J. Singer & Shambie Singer, *Statutes & Statutory Construction* § 45:12, at 115 (7th ed. Rev. 2014). In *Brakke,* the Court addressed the appropriateness of the doctrine to ignore the literal terms of a statute to "avoid a result that is not simply poor public policy, but is so unreasonable that it could not have been intended by the legislature and reflects the inherent limit of the legislative process to foresee various applications of the statute." 897 N.W.2d at 534. The Court found that versions of the absurdity doctrine have a long history in

federal courts.[6] *Id.* at 534-37. The Court noted there was an even stronger case though for applying the doctrine in state courts where the legislatures generally meet on a part-time basis and do not have extensive public hearings, markups, and staff review akin to congressional action. *Id.* at 537. The Court recognized that "large volumes of state legislation are often passed in the waning hours of a legislative session, with a flurry of last minute amendments, thus increasing the possibility that legislation may be passed without a full linguistic vetting." *Id.*

In Iowa, some courts have effectively invoked the absurdity doctrine albeit not identifying it as such. *Id.* at 538. In these cases, the courts employed what the *Brakke* Court characterized as "circular ambiguity" by declaring clear legislative text ambiguous if it produced absurd results in order to justify tools of construction. *Id.* The Court examined other occasions when Iowa courts have engaged in a specific absurdity analysis and found that its application has generally, but not always, been to narrow the scope of the statute. *Id.* at 538-39.[7] The Court approved the sparingly use of the absurd results doctrine as it had set out in a previous case and quoted the following:

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[6] An example of one narrow application in the federal courts was where "literal interpretation of the statute would lead to patently absurd consequences under circumstances where it is quite impossible that Congress could have intended the result ... and where the alleged absurdity is so clear as to be obvious to most anyone." *Brakke,* 897 N.W.2d at 536 (quoting Justice Kennedy, *Public Citizen v. United States Dep't of Justice*, 491 U.S. 440, 109 S.Ct. 2558, 105 L.Ed.2d 377 (1989).

[7] In one case, the court found the criminal statute breathtakingly broad when read literally and thus, interpreted the term "false" to mean the (public records) entry was made with intent to deceive. *State v. Hoyman*, 863 N.W.2d 1, 14 (Iowa 2015). In another case, the court construed the term "all information" to exclude work product, attorney work product, attorney-client, and other privileged materials when the statute did not have any qualifications. *Iowa Ins. Inst. v. Core Group of Iowa Ass'n for Justice*, 867 N.W.2d 58, 79 (Iowa 2015).

> [E]ven in the absence of statutory ambiguity, departure from literal construction is justified when such construction would produce an absurd and unjust result and the literal construction in the particular action is clearly inconsistent with the purposes and policies of the act.

Id. at 539-40 (quoting *Sherwin-Williams v. Iowa Dep't of Revenue*, 789 N.W.2d 427 (Iowa 1991) (citation omitted). The absurdity doctrine is well established in Iowa. It must be used sparingly and only when it is clear "the legislature did not intend the results required by literal application of the statutory terms." *Id.* at 540.

In this case, the application of the absurdity doctrine is warranted when section 8A.415(2) is unambiguous, but its literal application produces the absurd result of leaving contract-covered state merit employees without recourse to grieve disciplinary action. It is clear to all parties the legislature did not intend this result. Pursuant to Iowa Code chapter 8A the legislature provided a uniform grievance procedure to resolve grievances, including grievances involving discipline and discharge. At the same time, the legislature afforded deference to grievance procedures contained in collective bargaining agreements, which at one time provided an alternative recourse to the merit system grievance process. Presumably through these relevant chapter 8A provisions as well as section 20.18(2), the legislature intended for all state merit employees to have an available grievance process whether through the section 8A.415 merit employee appeal process or through grievance procedures provided by a collective bargaining agreement. The provisions clearly limit state merit employees to one or the other proceeding, but in no way suggest

that any state merit employee be left without any recourse.

But the landscape changed after the enactment of H.F. 291 when grievance procedures were made an excluded subject of bargaining for non-public-safety units. This in turn led to the State removing grievance procedures from some state collective bargaining agreements for non-public-safety units, which in turn led to contract-covered employees having no recourse to grieve disciplinary action—given the literal application of section 8A.415(2). Based on our reading of Iowa Code chapter 8A and section 20.18, the legislature clearly did not intend this absurd result.

Pursuant to the teaching of the *Brakke* Court, we do not engage in "circular ambiguity" to reach the right result. Rather, we invoke the absurdity doctrine to avoid the absurd result of leaving contract-covered state merit employees without recourse to grieve discipline and discharge which the literal application of section 8A.415(2) produces. We apply the doctrine to narrow the application of the overly broad exclusion of section 8A.415(2) so that it mirrors the exclusion of section 8A.415(1) and is consistent with legislative intent of providing state merit employees with at least one recourse of grieving disciplinary action. Thus, we interpret section 8A.415(2) as excluding only state merit employees who are covered by a collective bargaining agreement which provides otherwise. (Emphasis added). For additional clarification, we interpret "which provides otherwise" as an agreement which has grievance procedures including those for discipline and discharge.

Summary

Application of the absurdity doctrine is warranted in this case and other similarly-situated section 8A.415(2) state merit employee disciplinary action appeals to avoid the absurd result of leaving contract-covered state merit employees without recourse to grieve disciplinary action. We interpret the exclusion of section 8A.415(2) in a manner that mirrors section 8A.415(1) and excludes only state merit employees who are covered by a collective bargaining agreement which provides otherwise. Thus, PERB has jurisdiction to hear and adjudicate Sneitzer and other similarly-situated section 8A.415(2) state merit employees' disciplinary action appeals on the merits.

IT IS THEREFORE ORDERED that the Public Employment Relations Board has jurisdiction over Sneitzer's Iowa Code section 8A.415(2) state merit employee disciplinary action appeal and will proceed with conducting a hearing and adjudicating the matter on its merits.

DATED at Des Moines, Iowa, this 9th day of January, 2018.

PUBLIC EMPLOYMENT RELATIONS BOARD

By: _____
Michael G. Cormack, Board Chair

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Jamie K. Van Fossen, Board Member

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Mary T. Gannon, Board Member