

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

**INTERNATIONAL ASSOCIATION OF
PROFESSIONAL FIRE FIGHTERS,
LOCAL 2607,**

Petitioner,

vs.

**IOWA PUBLIC EMPLOYMENT
RELATIONS BOARD,**

Respondent,

and

**CEDAR RAPIDS AIRPORT
COMMISSION,**

Intervenor.

Case No. CV046087

**RULING AND ORDER ON PETITION
FOR JUDICIAL REVIEW**

This matter came before the Court on December 6, 2013, for oral argument in regard to the Petition for Judicial Review filed by the Petitioner, International Association of Professional Fire Fighters, Local 2607, seeking judicial review of a ruling by the Iowa Public Employment Relations Board, filed on June 17, 2013. Petitioner appeared by its attorney, Charles Gribble. Respondent appeared by its attorney, Diana Machir. Intervenor appeared by its attorney, James Hanks. After petitioner sought additional time to supplement arguments made during the oral hearing, the matter was fully submitted on January 16, 2014.

BACKGROUND FACTS AND PROCEEDINGS

The case before the Court presents a single issue of statutory interpretation. The Cedar Rapids Airport Commission (“Commission”) is a public employer within the meaning of Iowa

Code § 20.3(10). (Pet. Dec. Order ¶ 1). The International Association of Professional Fire Fighters, Local 2607 (“Petitioner”) is certified by the Iowa Public Employment Relations Board (“PERB”) as the exclusive bargaining representative for the bargaining unit of public safety employees employed by the Commission to work at the Cedar Rapids Airport. (Pet. Dec. Order ¶ 2(f)). The Petitioner and Commission had a collective bargaining agreement in effect from July 1, 2010 to June 30, 2013, which determined the terms of employment. (Pet. Dec. Order ¶ 2(g)). The agreement contained a provision relating to the employees’ hours of work. (Pet. Dec. Order ¶ 2(h)). During the negotiations for a new agreement, the parties disagreed about the right of the Commission to unilaterally determine the hours of operation of the Airport. (Pet. Dec. Order ¶ 2(j)).

On April 30, 2013, the Commission filed a Petition for Declaratory Order with PERB.

The Petition posed the following specific question:

Whether the Commission has the exclusive right and authority to determine the hours of operation of the Airport, including, but not limited to, the right and authority to determine that the hours of operation of the Airport will be fewer than twenty-four hours per day.

(Pet. Dec. Order ¶ 4).

On June 17, 2013, PERB issued its Declaratory Order, concluding that:

The Commission, as a public employer, has the exclusive right and authority under Iowa Code chapter 20 to determine that the Airport’s hours of operation will be fewer than twenty-four hours per day. The Board further concludes that the Commission has the right and authority under Iowa Code chapter 20 to determine the hours of operation of the Airport subject to the Commission’s duty to negotiate with Local 2607 over “hours” proposals that predominately relate to the employment relationship, such as employees’ starting and quitting times, break times, and the number of hours employees work.

(Dec. Order at 13).

On July 15, 2013, Petitioner filed this Petition for Judicial Review of PERB's June 17, 2013 Declaratory Order. Petitioner argues that PERB's decision is contrary to and an unjustifiable interpretation of the law.

STANDARD OF REVIEW

On judicial review of an agency action, the district court functions in an appellate capacity. *Greater Cmty. Hosp. v. Pub. Employment Relations Bd.*, 553 N.W.2d 869, 871 (Iowa 1996). Judicial review of a final agency action is governed by the application of standards set out in Iowa Code § 17A.19. The district court's review is limited to corrections of errors of law and is not de novo. *Second Injury Fund v. Klebs*, 539 N.W.2d 178, 179–80 (Iowa 1995). The Court has no original authority to declare the rights of the parties. *Office of Consumer Advocate v. Iowa State Commerce Comm'n*, 432 N.W.2d 148, 156 (Iowa 1988). Nearly all disputes in the field of administrative law are won or lost at the agency level. *Iowa-III. Gas & Elec. Co. v. Iowa State Commerce Comm'n*, 412 N.W.2d 600, 604 (Iowa 1987). Judgment calls are to be left to the agency. *Burns v. Bd. of Nursing*, 495 N.W.2d 698, 699 (Iowa 1993).

“The Court may affirm the agency action or remand to the agency for further proceedings.” Iowa Code § 17A.19(10) (2011). “The Court shall reverse, modify, or grant other appropriate relief from agency action, equitable or legal and including declaratory relief, if it determines that substantial rights of the person seeking judicial relief have been prejudiced” for any of the fourteen grounds listed under Iowa Code § 17A.19(10).

The Court must review the Commissioner's factual findings for substantial evidence based on the record viewed as a whole. *Id.* Substantial evidence means:

The quantity and quality of evidence that will be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact in issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance.

Id.

The Court upon its review shall reverse, modify, or grant appropriate relief to a petitioner, if the Agency's decision was unreasonable, arbitrary, capricious, or an abuse of discretion. *Id.* § 17A.19(10)(n). An Agency's action is "arbitrary" or "capricious" when the Agency acts "without regard to the law or facts of the case." *Dico, Inc. v. Iowa Employment Appeal Bd.*, 576 N.W.2d 352, 355 (Iowa 1998) (citation omitted). "An agency action is 'unreasonable' when it is 'clearly against reason and evidence.'" *Soo Line R.R. v. Iowa Dep't of Transp.*, 521 N.W.2d 685, 688–89 (Iowa 1994) (quoting *Frank v. Iowa Dep't of Transp.*, 386 N.W.2d 86, 87 (Iowa 1986)). "An abuse of discretion occurs when the agency action 'rests on grounds or reasons clearly untenable or unreasonable.'" *Dico*, 576 N.W.2d at 355 (quoting *Schoenfeld v. FDL Foods, Inc.*, 560 N.W.2d 595, 598 (Iowa 1997)).

The level of deference afforded to an agency's interpretations of law depends on whether the authority to interpret that law has "clearly been vested by a provision of law in the discretion of the agency." Compare Iowa Code § 17A.19(10)(c), with Iowa Code § 17A.19(10)(l). If the agency has not been clearly vested with the authority to interpret a provision of law, such as a statute, then the reviewing court must reverse the agency's interpretation if it is erroneous. Iowa Code § 17A.19(10)(c). If the agency has been clearly vested with the authority to interpret a statute, then a court may only disturb the interpretation if it is "irrational, illogical, or wholly unjustifiable." Iowa Code § 17A.19(10)(l).

Iowa Code § 20.6(1) states that PERB shall "interpret, apply, and administer the provisions of this chapter." Therefore, PERB's interpretation of Iowa Code Chapter 20 will be given deference in this case, and only reversed if it is irrational, illogical, or wholly unjustifiable. Iowa Code § 17A.19(10)(m).

ANALYSIS

The Commission presented the following specific question in its Petition for Declaratory Order before PERB:

Whether the Commission has the exclusive right and authority to determine the hours of operation of the Airport, including, but not limited to, the right and authority to determine that the hours of operation of the Airport will be fewer than twenty-four hours per day.

The following two sections of the Iowa Code are applicable to the issue before the Court.

20.7 Public employer rights.

Public employers shall have, in addition to all powers, duties, and rights established by constitutional provision, statute, ordinance, charter, or special act, the exclusive power, duty, and the right to:

1. Direct the work of its public employees.
2. Hire, promote, demote, transfer, assign and retain public employees in positions within the public agency.
3. Suspend or discharge public employees for proper cause.
4. Maintain the efficiency of governmental operations.
5. Relieve public employees from duties because of lack of work or for other legitimate reasons.
6. Determine and implement methods, means, assignments and personnel by which the public employer's operations are to be conducted.
7. Take such actions as may be necessary to carry out the mission of the public employer.
8. Initiate, prepare, certify and administer its budget.
9. Exercise all powers and duties granted to the public employer by law.

20.9 Scope of negotiations.

The public employer and the employee organization shall meet at reasonable times, including meetings reasonably in advance of the public employer's budget-making process, to 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.

The Iowa Supreme Court "has recognized that section 20.9 establishes two classes of collective bargaining proposals: mandatory and permissive." *Waterloo Educ. Ass'n v. Iowa Pub. Employment Relations Bd.*, 740 N.W.2d 418, 421 (Iowa 2007). The *Waterloo* decision elaborated on the importance of this distinction, stating:

Whether a proposal is a mandatory or permissive subject of bargaining under section 20.9 is a critical issue. If a subject is within the scope of mandatory bargaining, the parties are required to bargain over the issue, and if agreement is not reached, the statutory impasse procedures, which ultimately lead to binding arbitration, are available. *Decatur County v. Pub. Employment Relations Bd.*, 564 N.W.2d 394, 396 (Iowa 1997). If, on the other hand, the proposal is a permissive subject of bargaining under section 20.9, the public employer may reserve the right to decide the issue unilaterally by declining to participate in bargaining. When the employer declines to bargain over a permissive subject, the impasse procedures in PERA are not available and decisions related to the subject remain within the exclusive power of the public employer.

Id. at 421-22.

The issue before the Court is whether “operational hours” is a mandatory bargaining subject under § 20.9 or a permissive subject. The *Waterloo* decision set out the applicable two-pronged test:

The first prong for determining whether a proposal is subject to collective bargaining, the threshold topics test, is ordinarily a definitional exercise, namely, a determination of whether a proposal fits within the scope of a specific term or terms listed by the legislature in section 20.9. Once that threshold test has been met, the next inquiry is whether the proposal is preempted or inconsistent with any provision of law. Ordinarily, this two-step process is the end of the matter. Only in unusual cases where the predominant topic of a proposal cannot be determined should a balancing-type analysis be employed to resolve the negotiability issue.

Id. at 429.

The first prong of the test is the sole issue in this matter. To apply the first prong, the Court must determine the meaning of the relevant topic in § 20.9, in this case “hours.” *Id.* Then, to determine whether the proposal fits within the scope of the topic, “consideration must be given to the predominant purpose of the proposal and to what the employer would be bound to do if the proposal was adopted.” *Id.* at 427.

In its Declaratory Order, PERB specifically stated that it followed the analytical framework of the *Waterloo* two-pronged test to determine whether “operational hours” fit within the scope of “hours” as a mandatory bargaining topic under § 20.9. After analyzing prior case law, PERB determined that the topic of “hours” under § 20.9 “address[es] issues uniquely related

to the employees' relationship with their employer" such as hours of the workday, starting and quitting times, and break times. It found that "operational hours" is not predominately related to the employment relationship, and therefore does not fit within the scope of the term "hours" under § 20.9, stating that:

Generally, hours of operation are not predominately related to the employment relationship, but rather to the relationship between the public employer and its constituents. When and for how long a public employer operates or is "open for business" affects the level of service the public employer can provide to the public. This runs parallel to the public employer's rights regarding assignment and staffing. A public employer's decision on which and how many employees are on duty also affects the level of service.

Iowa Code § 20.6 states that PERB shall "interpret, apply, and administer the provisions of this chapter." The Declaratory Order specifically applied the correct *Waterloo* two-pronged test to determine if "operational hours" is a mandatory bargaining topic under § 20.9. PERB analyzed the applicable case law and found that "hours" under § 20.9 addresses issues that are predominately related to the employment relationship, and that "operational hours" does not fall within that scope. The Court gives deference to PERB's interpretation of the topic of "hours" in § 20.9, and finds that its interpretation is not irrational, illogical, or wholly unjustifiable as to require reversal. Iowa Code § 17A.19(10)(m).

ORDER

IT IS THEREFORE THE ORDER OF THIS COURT that the Decision of the Iowa Public Employment Relations Board, dated June 17, 2013, is hereby AFFIRMED. Costs are taxed to Petitioner.



State of Iowa Courts

Type: OTHER ORDER

Case Number CVCV046087
Case Title IAPFF, LOCAL 2607 V. IOWA PUBLIC EMPLOYMENT RELATI

So Ordered

A handwritten signature in black ink, reading "Robert A. Hutchison". The signature is written in a cursive style and is positioned above a horizontal line.

Robert A. Hutchison, District Court Judge,
Fifth Judicial District of Iowa