

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

FORT DODGE COMMUNITY SCHOOL DISTRICT,

Petitioner,

v.

IOWA PUBLIC EMPLOYMENT RELATIONS BOARD,

Respondent,

and

FORT DODGE EDUCATION ASSOCIATION, FORT
DODGE MAINTENANCE EMPLOYEES BARGAINING
UNIT (BUS DRIVERS), FORT DODGE EDUCATION
ASSOCIATION (ASSOCIATES), FORT DODGE
SECRETARIAL/CLERICAL EDUCATION
ASSOCIATION, FORT DOGE MAINTENANCE
EMPLOYEES BARGAINING UNIT (BLUE COLLAR),

Intervenors.

Case No. CVCV009290

RULING ON PETITION FOR
JUDICIAL REVIEW

On April 25, 2013, the parties argued this judicial review to the Court. Andrew J. Bracken appeared on behalf of the Petitioner, Fort Dodge Community School District. Diana S. Machir appeared on behalf of the Respondent, the Iowa Public Employment Relations Board. Gerald L. Hammond appeared on behalf of the Intervenors, the Iowa State Education Association. The Court, hearing the arguments of counsel and reviewing the court file, the briefs, and the certified administrative record, now enters the following ruling.

I. STATEMENT OF THE CASE

This is a judicial review of agency action under the Iowa Administrative Procedure Act, Iowa Code Chapter 17A. The agency action is a ruling from the Iowa PERB in a negotiability dispute under the Iowa Public Employment Relations Act, Iowa Code Chapter 20. The parties

disagree about whether severance pay is a permissive or mandatory topic of bargaining under the Act. The PERB held that it is a mandatory topic. The District appeals claiming severance pay is a permissive topic of bargaining under section 20.9. It also argues the agency erred in its interpretation of supplementary pay.

II. BACKGROUND FACTS AND PROCEEDINGS

The District is a public employer within the meaning of Iowa Code section 20.3(11). The district has five employee units organized for purposes of collective bargaining: the Fort Dodge Education Association, Fort Dodge Maintenance Employees Bargaining Unit (Bus Drivers), Fort Dodge Education Association (Associates), Fort Dodge Secretarial/Clerical Education Association, and the Fort Dodge Maintenance Employees Bargaining Unit (Blue Collar).

In the spring of 2012, the District and the employee organizations were engaged in negotiations for renewal of the collective bargaining agreements. During those negotiations, the District proposed eliminating the provisions relating to severance pay. The District and the organizations disagreed over these provisions were mandatory or permissive under Iowa Code section 20.9.

The District filed a petition regarding this dispute and the Association (the employee organizations) resisted. PERB rendered a preliminary ruling concluding that the items were mandatory subjects of bargaining. PERB's formal written ruling also concluded that the items were mandatory topics of negotiation. The District sought judicial review.

III. STANDARD OF REVIEW

The Iowa Administrative Procedure Act, Chapter 17A of the Iowa Code, governs judicial review of administrative agency action. The Court shall reverse, modify, or grant other appropriate relief from final agency action if it determines that the substantial rights of the

petitioner have been prejudiced. The burden of demonstrating prejudice and the invalidity of agency action is on the party asserting invalidity.¹ The Court shall make a separate and distinct ruling on each material issue on which it bases its decision.²

Under Chapter 17A the Court must analyze the parties' claims under the appropriate standard of review.³ The statutory scheme outlines fourteen standards of review.⁴ The petitioner is responsible for "pinpoint[ing] the precise claim of error on appeal."⁵ The parties in this case agree⁶ that the appropriate standard of review must be one involving statutory interpretation.⁷

When a judicial review action concerns an issue of statutory interpretation, the Court must first determine whether to give the agency's interpretation deference.⁸ The Court defers to the agency when "'interpretation of the statute is 'clearly . . . vested by a provision of law in the discretion of the agency.'"⁹ If the legislature clearly vested interpretation in the agency, the

¹ Iowa Code § 17A.19(8)(a) (2011).

² *Id.* § 17A.19(9).

³ *Id.* § 17A.19(8)(b).

⁴ *Id.* § 17A.19(10)(a)–(n).

⁵ *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 219 (Iowa 2006).

⁶ Initially, the District claimed the agency's ruling was based upon an erroneous interpretation of a provision of law whose interpretation has not been clearly vested by a provision of law in the discretion of the agency. It abandoned this basis of error in its Reply. It stated, "The School District recognizes that PERB now has the authority to interpret Chapter 20"

⁷ The District lists six separate standards of review, but the substantive standard-of-review discussion only concerns the two statutory interpretation standards. In its brief, it states, "the Court's review is for correction of errors at law" and cites only the standard found in subsection c. The District does not articulate the claims of error to justify application of the other standards of review—specifically, those found in subsections b, i, j, or n. Instead, its arguments address the proper interpretation of the statutory language. The Court believes the District wisely devoted its time to the statutory interpretation issue. The case law makes clear the relevant standards for statutory interpretation. See *Waterloo Educ. Ass'n v. Iowa Pub. Emp't Relations Bd.*, 740 N.W.2d 418, 419–20 (Iowa 2007) (hereinafter *Waterloo II*). For this reason, the Court finds that the other standards the District listed do not apply.

⁸ See Iowa Code § 17A.19(10)(c), (*I*); *Waterloo II*, 740 N.W.2d at 419–20.

⁹ *Waterloo II*, 740 N.W.2d at 419 (quoting Iowa Code § 17A.19(10)(c)).

Court applies the “irrational, illogical, or wholly unjustifiable” standard of review.¹⁰ “Alternatively, if interpretation has not been [clearly] vested,” the Court reviews for errors at law.¹¹

Determining whether the legislature has clearly vested interpretive authority in the agency can be a difficult task.¹² Generally, this inquiry mandates a case-by-case analysis.¹³ However, “[t]he question of whether interpretative discretion has been clearly vested in an agency is easily resolved when the agency’s enabling statute explicitly addresses the issue.”¹⁴

The Iowa Supreme Court has previously held that the legislature did not clearly vest PERB with the interpretation of mandatory subjects of collective bargaining under Iowa Code section 20.9.¹⁵ Normally, this binding precedent would preclude the Court from finding that the agency is entitled to deference, but the legislature amended the enabling statute since those judicial decisions.¹⁶ The amendment altered the agency’s authority. Before the amendment, the statute granted PERB the authority to “administer” the provisions.¹⁷ The 2010 amendment, reflected in the 2011 Code, granted PERB the authority to “interpret, apply, and administer the

¹⁰ *Id.* at 419–20.

¹¹ *Id.* at 420.

¹² *See generally Renda v. Iowa Civil Rights Comm’n*, 784 N.W.2d 8, 10–15 (Iowa 2010) (outlining the proper analysis for determining whether the legislature has clearly vested interpretative authority in the agency).

¹³ *Id.* at 13–14.

¹⁴ *Id.* at 11.

¹⁵ *Waterloo II*, 740 N.W.2d at 420; *see also United Elec., Radio & Machine Workers of Am. v. Iowa Pub. Emp’t Relations Bd.*, No. 11–0547, 2011 WL 6062038, at *2 (Iowa Ct. App. Dec. 7, 2011).

¹⁶ *United Electrical* came down after the amendment, but it applied a pre-amendment version of the statute. *United Elec.*, 2011 WL 6062038, at *1.

¹⁷ Iowa Code § 20.6 (2009).

provisions” of Chapter 20.¹⁸ Because PERB’s enabling statute now explicitly grants PERB the authority to interpret and apply the provisions of Chapter 20, the Court gives deference to the agency’s interpretation.¹⁹ As a result, it will only reverse if the agency acted irrationally, illogically, or wholly unjustifiably.²⁰ Agency action is irrational, illogical, or wholly unjustifiable when it is unreasonable.²¹

DISCUSSION

This case concerns the scope of bargaining outlined in Iowa Code section 20.9. Section 20.9 creates two classes of negotiating subjects:²² mandatory or permissive.²³ The statute provides a “laundry list” of mandatory topics of discussion.²⁴ Topics that do not fall within a mandatory topic are permissive.²⁵

Prior to 2007, the test for determining whether a topic was mandatory or permissive was murky.²⁶ The Iowa Supreme Court often applied inconsistent tests to decide this issue.²⁷ The

¹⁸ Iowa Code § 20.6 (2011).

¹⁹ *Cf. Renda*, 784 N.W.2d at 11.

²⁰ *Waterloo II*, 740 N.W.2d at 419 (quoting Iowa Code § 17A.19(10)(c)).

²¹ Arthur E. Bonfield, *Amendments to Iowa Administrative Procedure Act, Report on Selected Provisions to Iowa State Bar Association and Iowa State Government* 70 (1998).

²² *Waterloo II*, 740 N.W.2d at 421.

²³ The distinction is important because it dictates the channel for resolving disputes. *Id.* at 421–22. The statute requires parties to bargain over mandatory subjects. *Id.* at 422. If they do not agree, they must follow the statutory impasse procedures. *Id.* The statute does not require the public employer to bargain over permissive subjects. *Id.* If the parties disagree on a permissive subject, the statute entitles the employer “to decide the issue unilaterally by declining to participate in bargaining.” *Id.* at 422.

²⁴ *Id.* at 421.

²⁵ *Id.* at 425 (citing *Charles City Cmnty. Sch. Dist. v. Pub. Emp’t Relations Bd.*, 275 N.W.2d 766, 771–73 (Iowa 1979) (hereinafter *Charles City I*) and *City of Fort Dodge v. Iowa Pub. Emp’t Relations Bd.*, 275 N.W.2d 393, 397–98 (Iowa 1979)).

²⁶ *See generally Waterloo II*, 740 N.W.2d at 420–28 (discussing the history of and approaches to scope of bargaining issues).

Court illuminated this dilemma in *Waterloo II*. The *Waterloo II* Court examined the different approaches it had previously used to settle these cases and discussed the merits and shortcomings of each test. The Court then settled on a uniform analysis — a “topics test.”²⁸ It specifically disapproved of cases that did not follow the topics test, and acknowledged with approval the decisions and dissenting opinions that applied it.²⁹

A. Topics Test

The topics test consists of a two-prong approach.³⁰ The first prong is a “threshold topics test,” which requires the Court to engage in “a definitional exercise, namely, a determination of whether a proposal fits within the scope of a specific term or terms” the legislature listed in section 20.9.³¹ To apply the first prong properly, courts must give words their ordinary and common meaning while being careful not to interpret them so expansively that they encompass the other enumerated topics.³² If the proposal satisfies the threshold test, courts must apply the second prong—“whether the proposal is preempted or inconsistent with any provision of law.”³³

²⁷ *See id.*

²⁸ *Id.* at 428–29.

²⁹ *See, e.g., id.* (reflecting the Court’s approval of the majority’s opinion in *State v. Pub. Emp’t Relations Bd.*, 508 N.W.2d 668 (Iowa 1993), the majority’s opinion in *Northeast Cmnty. Sch. Dist. v. Pub. Emp’t Relations Bd.*, 408 N.W.2d 46 (Iowa 1987), and Justice McCormick’s dissent in *Charles City I*, 275 N.W.2d at 776).

³⁰ *Waterloo II*, 740 N.W.2d at 429.

³¹ *Id.*

³² *Id.* at 429–30.

³³ *Id.* at 429. The Court went on to say, “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.*

Waterloo II is controlling in this case. The parties to agree to its application but disagree as to the extent to which *Waterloo II* rendered irrelevant the prior cases interpreting the mandatory/permissive nature of subjects under section 20.9.

B. PERB's Application of the Topics Test

In its final ruling, PERB applied the *Waterloo II* topics test and concluded that severance pay was a mandatory topic. It found that severance pay fit within the definition of “supplemental pay,” a mandatory topic under section 20.9. PERB disavowed the holdings of two pre-2007 cases³⁴ that defined supplemental pay.³⁵ It found that neither complied with the test mandated by *Waterloo II*. It believed it needed to start from scratch to define supplemental pay because the previous cases did so too narrowly and restrictively.

PERB's definition of supplemental pay is “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.” It derived the common and ordinary meaning of the term from dictionaries, definitions from other jurisdictions, and definitions from other agencies. After it considered these sources, it narrowed its definition to ensure its interpretation would not make other section 20.9 topics redundant.

C. Parties' Contentions

Did PERB properly interpret section 20.9? The District argues that severance pay is a permissive topic. It mounts three primary challenges to PERB's ruling: (1) PERB should have

³⁴ These were *Fort Dodge Cmnty. Sch. Dist. v. Pub. Emp't Relations Bd.*, 319 N.W.2d 181 (Iowa 1982) and *Prof'l Staff Ass'n of Area Educ. Agency 12 v. Pub. Emp't Relations Bd.*, 373 N.W.2d 516 (Iowa Ct. App. 1985).

³⁵ The District claims PERB “read[] *Waterloo II* as a 180 degree change in the interpretation of section 20.9, allowing it to set aside decades of court precedent.” The Court reads PERB's ruling differently. PERB acknowledged *Waterloo II* changed the “landscape,” but it did not set aside all pre-2007 cases. It only found that *Waterloo II* added a layer to its examination of precedent. Under PERB's reading, *Waterloo II* required it to give weight only to those cases in which the court applied the proper test.

found that pre-2007 cases addressing supplemental pay were controlling authority; (2) even if pre-2007 cases are not controlling, PERB's definition of supplemental pay is too broad; and (3) even if PERB's definition stands, severance pay does not fall under the umbrella of supplemental pay. PERB responds that severance pay is a mandatory topic and maintains it followed the proper path for reaching its conclusion under *Waterloo II*. The Association supports PERB's interpretation.

D. Analysis

Before addressing the parties' arguments, the Court wishes to emphasize two overarching principles that inform its decision. First, the burden is on the District to establish the invalidity of PERB's interpretation. Second, the Court must give deference to PERB's interpretation of section 20.9 and will only reverse if PERB acted irrationally, illogically, or wholly unjustifiably. These are heavy burdens for the District to overcome. On these principles alone, the Court concludes the agency's decision should be affirmed. However, the Court will also discuss the merits of the District's contentions.

1. Whether PERB should have considered four pre-2007 cases.

The District claims stare decisis dictates consideration of four pre-2007 cases: *Charles City I*, *City of Fort Dodge*, *Fort Dodge CDS*, and *Professional Staff*. It also argues that *Waterloo II* did not dispense of the precedential value of pre-2007 cases.

The Court agrees that *Waterloo II* did not strip all pre-2007 cases of their precedential value in interpreting section 20.9. In fact, the Court in *Waterloo II* approved of the definition of wages in *City of Fort Dodge*.³⁶ However, the Court was careful to explain how the *City of Fort*

³⁶ *Waterloo II*, 740 N.W.2d at 429.

Dodge definition of wages conformed to the topics test.³⁷ It also engaged in further analysis.³⁸ The *City of Fort Dodge* Court’s handling of supplemental pay, on the other hand, did not conform to the topics test; it equated wages with pay (in “supplemental pay”) and thus rendered supplemental pay superfluous under section 20.9.³⁹ *Waterloo II* warned against an interpretation that would render other provisions superfluous, and PERB relied on that principle in determining the pre-2007 cases were not controlling as to supplemental pay. Because the pre-2007 cases failed to satisfy the topics test articulated in *Waterloo II*, it was proper for PERB to overlook the precedential value of those cases.⁴⁰

2. Whether PERB’s definition of supplemental pay is too broad.

The District believes PERB’s definition of supplemental pay is overbroad for two reasons: (1) it makes other section 20.9 topics redundant, in violation of *Waterloo II*’s admonition, and (2) it expands the topics of mandatory bargaining contrary to the legislature’s intent.

These arguments are not persuasive. PERB ensured that its definition of supplemental pay would not encompass other section 20.9 topics. It limited the application of supplemental pay to that related to the employment relationship. PERB found that severance pay was “related to the employment relationship in that the payment is made upon termination, is conditioned upon length of service, and is calculated based on unused, accumulated sick leave.” The examples the District provides in its brief to prove the overbreadth of PERB’s definition do not

³⁷ *Id.* at 429–30.

³⁸ *Id.* (referencing the diction definition of wages).

³⁹ *City of Fort Dodge*, 275 N.W.2d at 398.

⁴⁰ Even if the pre-2007 supplemental cases are controlling authority, failure to consider them was not irrational, illogical, or wholly unjustifiable.

relate to the employment relationship. PERB's limitation of this topic under section 20.9 was rational, logical, and justifiable.

The Court also concludes that PERB's definition is consistent with the legislative intent. The District argues the legislature intended for supplemental pay to include only "additional pay for additional services above and beyond the employee's normal services." This interpretation would render the supplemental pay provision in section 20.9 superfluous because it would fall under the umbrella of wages, as the *Waterloo II* court defined them.⁴¹ The legislature does not intend for words in a statute to be superfluous. PERB's conclusion in this regard was proper.

3. Whether severance pay falls under PERB's definition of supplemental pay.

Finally, the Court finds that severance pay is "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." Severance pay is "[m]oney (apart from back wages or salary) paid by an employer to a dismissed employee."⁴² It falls squarely within PERB's definition of supplemental pay: (1) it is money that is not wages or salary (another topic under section 20.9), and (2) it is given to a dismissed employee—i.e., it is conditioned on the employment relationship. The Court cannot find that PERB's conclusion was irrational, illogical, or wholly unjustifiable.

CONCLUSION

The Court concludes PERB's interpretation of Iowa Code section 20.9—that severance pay is a mandatory topic of bargaining—was not irrational, illogical, or wholly unjustifiable.

⁴¹ It defined wages as "[p]ayment for labor or services, usually based on time worked or quantity produced" and given "on an 'hourly, daily, piecework basis.'" *Waterloo II*, 740 N.W.2d at 430.

⁴² *Black's Law Dictionary* (9th ed. 2009).

ORDER

IT IS THEREFORE ORDERED that the agency's decision is hereby AFFIRMED and the Petition is dismissed with costs assessed to Petitioner.

Dated this 20th day of May, 2013.

ROBERT J. BLINK, JUDGE
Fifth Judicial District of Iowa

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