

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

**DES MOINES ASSOCIATION OF
PROFESSIONAL FIRE FIGHTERS,
LOCAL 4,**

Petitioner,

vs.

**IOWA PUBLIC EMPLOYMENT
RELATIONS BOARD,**

Respondent,

and

CITY OF DES MOINES,

Intervenor.

Case No. CV047951

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

This matter came before the Court on December 19, 2014, for oral argument in regard to the Petition for Judicial Review filed by the Petitioner, Des Moines Association of Professional Fire Fighters, Local 4, seeking judicial review of a ruling by the Iowa Public Employment Relations Board, filed on June 2, 2014. The Court, hearing the arguments of counsel and reviewing the court file, including the briefs filed by the parties and the certified administrative record, now enters the following ruling:

BACKGROUND FACTS AND PROCEEDINGS

The case before the Court presents a single issue of statutory interpretation. The facts in the record, as found by the Public Employment Relations Board (“PERB”), are not disputed. The City of Des Moines (“City”) is a public employer within the meaning of Iowa Code § 20.3(10). The Des Moines Association of Professional Fire Fighters, Local 4 (“Local 4”) is certified by

PERB as the exclusive bargaining representative for the bargaining unit of City employees, which among others includes fire fighters, fire lieutenants, and fire captains. The City and Local 4 are parties to a collective bargaining agreement (“CBA”). Article 26 of the CBA contained a provision about wages. This provision detailed the compensation range for fire fighters, fire lieutenants, and fire captains. Fire captains usually make about \$5,500 more than fire lieutenants.

The City operates ten fire stations providing 24 hour service. The fire stations are either single-company or multi-company. A company is a group of employees who staff an apparatus, such as a fire engine or ambulance. Prior to 1989, lieutenants were in charge of single-company fire stations and captains were in charge of multi-company fire stations. In 1989, the City assigned captains to command all fire stations, both single and multi-company. Occasionally, lieutenants have been assigned to temporarily serve as acting captains if the captain was absent. Under the CBA, the lieutenant assigned as an acting captain would receive additional compensation called “acting pay.”

In fall 2011, the City fire chief made a budget recommendation to return to the pre-1989 staffing assignment by having lieutenants command all single-company fire stations. In February 2012, the City Council adopted the budget recommendation. On April 2, 2012, the first lieutenant reported for duty to permanently command a single-company fire station. These lieutenants are still paid at the lieutenant compensation level outlined in the CBA. Lieutenants at multi-company fire stations who temporarily fill in for captains are still paid the additional “acting pay.”

Local 4 filed a prohibited practice complaint with PERB on June 29, 2012, arguing that the City, by assigning lieutenants to perform the duties of a captain without additional compensation, made a unilateral change that affected terms of the CBA that are mandatory

subjects of bargaining. PERB found that the change did not affect a mandatory topic of bargaining, stating that:

The changes implemented by the City on April 2, 2012 did not alter the status quo concerning job classifications. No job classification existing immediately prior to April 2 was eliminated or altered in any way. Nor was a new job classification created.

Instead, the changes ... plainly related to the assignment of captains and lieutenants, and the job content or duties of the lieutenants—matters not within the common and ordinary meaning of wages, job classifications or any other 20.9 topic.

On July 15, 2013, Petitioner filed this Petition for Judicial Review of PERB's June 2, 2014 ruling. Petitioner argues that PERB's decision is based upon an irrational, illogical, or wholly unjustifiable interpretation of 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-Ill. 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). “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 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).

A decision is “irrational” when it is “not governed by or according to reason.” *Webster's Third New International Dictionary* 1195. A decision is “illogical” when it is “contrary to or devoid of logic.” *Id.* at 1127. A decision is “unjustifiable” when it has no foundation in fact or reason. *See id.* at 2502 (defining “unjustifiable” as “lacking in ... justice”); *id.* at 1228 (defining “justice” as “the quality or characteristic of being just, impartial or fair”); *id.* (defining “just” as “conforming to fact and reason”).

AFSCME Iowa Council 61 v. Iowa Pub. Employment Relations Bd., 846 N.W.2d 873, 878 (Iowa 2014).

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); *AFSCME Iowa Council 61 Bd.*, 846 N.W.2d at 878.

ANALYSIS

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 the unilateral change enacted by the City involved a mandatory bargaining subject under § 20.9. 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 “wages” or “job classifications.” *Id.* To determine the meaning of a mandatory bargaining topic, the term is given its common and ordinary meaning. *Id.* at 430. Then, to determine whether the action 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.

Here, PERB applied the proper analysis to determine whether the City’s action involved a mandatory bargaining topic under section 20.9. First, PERB cited *Waterloo Educ. Ass’n* in finding that the common and ordinary meaning of wages is “payment for labor or services, usually based on time worked or quantity produced, or as payment for labor or services on an hourly, daily or piecework basis.” 740 N.W.2d at 430. PERB concluded that the City’s action did not affect “wages” because it did not alter the wages of lieutenants or captains; they were paid the same before and after the City implemented its action. Next, PERB found that the common and ordinary meaning of job classifications “relates to the arrangement of jobs into categories, based on selected factors, for the primary purpose of establishing wage or salary rates.” PERB

concluded that the City's action did not affect job classifications, stating that "no job classification existing immediately prior to April 2 was eliminated or altered in any way. Nor was a new job classification created. Instead, the changes... "plainly related to the assignments of captains and lieutenants, and the job content or duties of the lieutenants."

The Court finds that PERB applied the proper analysis in determining whether the City's action involved a mandatory bargaining topic. It found accepted definitions of wages and job classifications based upon their common and ordinary meanings, and concluded that the City's action did not affect either term. The Court gives deference to PERB's interpretation of the topics of "wages" and "job classifications" 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 2, 2014, is hereby AFFIRMED.



State of Iowa Courts

Type: OTHER ORDER

Case Number CVCV047951
Case Title DES MOINES ASSOC PROF FF ETAL VS IA PUBL EMPLOYMNT
RELATN BRD

So Ordered

A handwritten signature in cursive script that reads "Scott D. Rosenberg". The signature is written in black ink and is positioned above a horizontal line.

Scott D. Rosenberg, District Court Judge,
Fifth Judicial District of Iowa