

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

**BOARD OF REGENTS,
STATE OF IOWA, and
THE UNIVERSITY OF IOWA,**

Petitioners,

vs.

**IOWA PUBLIC EMPLOYMENT
RELATIONS BOARD,**

Respondent,

UE LOCAL 896/COGS,

Intervenor.

Case No. CVCV049496

**RULING ON PETITION
FOR JUDICIAL REVIEW**

This matter came before the court on July 24, 2015, for a hearing on the petition for judicial review. The petitioners, the Board of Regents, State of Iowa, and the University of Iowa (hereinafter referred to collectively as the “State”) were represented by Assistant Attorney General George A. Carroll. The respondent in this case, the Iowa Public Employment Relations Board (hereinafter “PERB”), was represented by attorney Jan Berry. The intervenor in this case, UE Local 896/COGs (hereinafter the “Union”), was represented by attorney Nathan Willems. The Union was not present and did not participate in the hearing, electing instead to rely solely on its briefing. Having heard the arguments from counsel, reviewed the court file, and the record from the underlying case, and being otherwise fully advised, this court makes the following ruling:

I. FACTUAL AND PROCEDURAL BACKGROUND

This case involves a dispute over whether a fee reimbursement proposal constitutes mandatory or permissive subject of collective bargaining under the Iowa Public Employment

Relations Act (hereinafter “IPERA”). Iowa Code § 20.9. In public collective bargaining, whether a subject constitutes a mandatory or permissive subject of collective bargaining carries significant ramifications.

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. 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 [the Iowa Public Employment Relations Act] are not available and decisions related to the subject remain within the exclusive power of the public employer.

Waterloo Educ. Ass’n v. Iowa Public Employment Relations Bd., 740 N.W.2d 418, 421-22 (Iowa 2007) (internal citations omitted).

In this case, the Union and the State were engaged in collective bargaining for a contract to become effective July 1, 2015. The State asserted it did not have to negotiate over the following Union proposal as it did not constitute a mandatory bargaining subject under section 20.9:

**ARTICLE XII
FEES REIMBURSEMENT**

Section 1. All bargaining unit employees appointed for a total of twenty-five percent (25%) or more for the entire semester, academic year, or fiscal year will be assured a one hundred percent (100%) mandatory fees reimbursement.

Section 2. All bargaining unit employees appointed for a total of twenty-five percent (25%) or more for the academic year, fiscal year, or spring semester will be assured a one hundred percent (100%) mandatory fees reimbursement for all subsequent summer sessions of that calendar year.

Section 3. All bargaining unit employees appointed for less than a full semester or term shall receive [mandatory] fees reimbursement pro-rated to reflect the length of their appointment.

Section 4. All international student bargaining unit employees will receive a one hundred percent (100%) international fee reimbursement.

Record tab 1, at 2, Petitioner's Exhibit A. The Union countered that the proposal fell within the parameters of section 20.9 mandatory bargaining.

On December 4, 2014, the State filed a petition for an expedited resolution of the negotiability dispute. On January 14, 2015, PERB issued a preliminary ruling that the fee proposal constituted a mandatory subject of bargaining. On January 22, 2015, the State requested a final ruling on the negotiability dispute. On February 25, 2015, PERB issued a final ruling that the fee proposal fell within the meaning of the term "supplemental pay" as used in section 20.9, and therefore constituted a mandatory subject of bargaining. The State subsequently petitioned for judicial review. The court held a hearing on July 24, 2015.

II. STANDARD OF REVIEW

Typically, the authority to interpret statutes belongs to the court, but where the legislature clearly delegates the authority to interpret or elaborate a statutory term to an agency, the court employs a more deferential standard of review. *Renda v. Iowa Civil Rights Com'n*, 784 N.W.2d 8, 11 (Iowa 2010) (quoting Arthur E. Bonfield, *Amendments to Iowa Administrative Procedure Act, Report on Selected Provisions to Iowa State Bar Association and Iowa State Government* 62 (1998)). However, when the legislature has clearly vested interpretation of a provision of law to the agency, the court can only reverse the agency if the agency interpretation, or application of law to facts, is irrational, illogical, or wholly unjustifiable. Iowa Code §§ 17A.19(10)(l) and (m).

The Iowa Code specifically vests PERB with the authority to interpret, apply, and administer the provisions of the IPERA. Iowa Code § 20.6(1). "The question of whether interpretive discretion has clearly been vested in an agency is easily resolved when the agency's enabling statute explicitly addresses the issue." *Renda*, 748 N.W.2d at 11. As the legislature has clearly vested PERB with interpretive authority, the court reviews PERB's interpretation and

application of Iowa Code section 20.9 to determine if it is “irrational, illogical, or wholly unjustifiable,” pursuant to Iowa Code sections 17A.19(10)(l) and (m). *AFSCME Iowa Council 61 v. Iowa Public Employment Relations Board*, 846 N.W.2d 873, 878 (Iowa 2014).

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.* (defining “justice” as “the quality or characteristic of being just, impartial or fair”); *id.* (defining “just” as “conforming to fact and reason”).

Id. (quoting *Sherwin-Williams Co. v. Iowa Dep’t of Revenue*, 789 N.W.2d 417, 432 (Iowa 2010)).

III. CONCLUSIONS OF LAW

Iowa Code section 20.9 enumerates an exclusive list of seventeen topics subject to mandatory collective bargaining procedures. Iowa Code § 20.9; *AFSCME Iowa Council 61*, 846 N.W.2d at 878-79; *Waterloo Educ. Ass’n*, 740 N.W.2d at 425. The term “supplemental pay” is one of those seventeen topics. Iowa Code § 20.9. Since 2007, in determining whether a proposal constitutes a subject of mandatory bargaining, PERB would look to whether the predominant subject of a proposal fell within the scope of a topic listed in section 20.9, and if so, whether any other provision of law preempts or is inconsistent with that proposal. *AFSCME Iowa Council 61*, 846 N.W.2d at 881 (citing *Waterloo Educ. Ass’n*, 740 N.W.2d at 425, 429).

The topics listed in Iowa Code section 20.9 cannot be defined “in a fashion so expansive that the other specifically identified subjects of mandatory bargaining become redundant,” nor are the topics “subject to the narrowest possible interpretation. Consistent with legislative intent, PERB must give each topic in section 20.9 “its common and ordinary meaning within the structural parameters imposed by section 20.9.

Id. at 879 (internal citations omitted) (quoting *Waterloo Educ. Ass’n*, 740 N.W.2d at 429-30).

PERB followed those procedures in this case and defined “supplemental pay” as “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.” Record tab 9, at 4, Ruling on Negotiability Dispute. The Iowa Court of Appeals has affirmed this definition of “supplemental pay” under the irrational, illogical, and unjustifiable deferential standard. *Fort Dodge Community School Dist. v. Iowa Public Employment Relations Bd.*, 855 N.W.2d 733, 741 (Iowa Ct. App. 2014). PERB then analyzed whether the Union’s fee reimbursement proposal fell within the definition of “supplemental pay.” Record tab 9, at 6, Ruling on Negotiability Dispute. There is not any contention from the parties that the reimbursement of student fees constitutes a payment of money or other value in addition to compensation received under another section 20.9 topic. Rather, the primary contention concerns whether the reimbursement of student fees relates to the employment relationship.

In assessing the third element of supplemental pay, PERB stated “[w]e are not concerned here with whether the benchmark upon which the required payment is calculated is related to the employment relationship. Rather, we are concerned with whether the *trigger* that requires payment of money or other thing of value by the employer is related to the employment relationship.” Record tab 9, at 7, Ruling on Negotiability Dispute (emphasis original). PERB found that an individual’s status as a unit member employee triggered the right to receive the fee reimbursement, and was thereby related to the employment relationship as it was “the creation of that relationship which triggers the payment obligation, somewhat similar to a hiring bonus.” Record tab 9, at 7, Ruling on Negotiability Dispute. The court cannot conclude that such a definition or application to the proposals at issue is irrational, illogical, or wholly unjustifiable.

First, the State contests that PERB’s application of “related to the employment relationship” overextends beyond prior established precedent, renders other section 20.9 topics superfluous, and essentially creates open scope bargaining in direct contravention of clear

legislative intent regarding limited scope bargaining in Iowa. Further, the State argues a much more reasonable application of “related to the employment relationship,” more consistent with case law, would look towards any exchange of consideration. The State claims that the issue of consideration was present in *Fort Dodge Community School District*, even though the Iowa Court of Appeals did not discuss the topic, and provides a sufficient distinguishing reason for diverging from the Iowa Court of Appeals in this case. The court does not look to whether prior cases set forth a more logical or reasonable definition of “supplemental pay” in the State’s opinion, or whether prior definitions more consistently flow in line with legislative intent. *See Fort Dodge Community School Dist.*, 855 N.W.2d at 740. Rather this court looks to whether the definition or application of “supplemental pay” is irrational, illogical, or wholly unjustifiable. *See id.* The vast majority of the State’s arguments of this nature came before the Iowa Court of Appeals, and the Court of Appeals affirmed PERB’s definition of “supplemental pay.” *Id.* at 741. The court sees no justification in altering or overturning that definition now.

Second, the State argues student fees do not relate to an employment relation. PERB clarified in its final ruling that it is not concerned with the benchmark calculation, but the triggering mechanism that requires payment. Record Tab 9, at 7, Ruling on Negotiability Dispute. In other words, as the student only becomes entitled to the fee reimbursement when he or she becomes a bargaining unit employee, the reimbursement of the student fees are related to the employment relationship. The State argues that the fee reimbursement proposal does not address a triggering event, and if any can be found, the event would be when the student pays his or her mandatory fees. The State bases this argument on the fact that students are not entitled to reimbursement on the basis of being hired, but become entitled after paying the mandatory fee.

The court disagrees. Regardless of when the individual receives the value, the only element entitling the individual to reimbursement is the individual's status as a bargaining unit employee.

The court finds PERB followed established precedent by looking to Iowa Code section 20.9 to determine if the fee proposal fell within the scope of one of the mandatory topics of collective bargaining. Employing the definition of "supplemental pay" recently approved by the Iowa Court of Appeals in *Fort Dodge Community School District*, PERB found the fee reimbursement proposal related to the employment relationship, and therefore fell within the definition of supplemental pay. PERB demonstrated a rational and logical approach for determining whether the payment of value relates to the employment relationship. For those reasons the court finds PERB was not irrational, illogical, or wholly unjustifiable, and did not exceed its authority, in finding the fee reimbursement proposal fell within the meaning of "supplemental pay" under Iowa Code section 20.9, and therefore constituted a mandatory bargaining subject.

IV. ORDER

IT IS THEREFORE THE ORDER OF THE COURT that the State's petition for judicial review is denied and the Iowa Public Employment Relations Board's Ruling on Negotiability Dispute issued on February 25, 2015 is **AFFIRMED**.

Costs are assessed to the Petitioners.



State of Iowa Courts

Type: OTHER ORDER

Case Number CVCV049496
Case Title BOARD OF REGENTS STATE OF IOWA VS IOWA PUBLIC
EMPL

So Ordered

Karen A. Romano, District Court Judge,
Fifth Judicial District of Iowa