

2014 PERB CONFERENCE: Celebrating 40 Years

A Discussion about Discovery, Hearing Preparation, and Making the Record in Arbitration and PERB Cases

Presented by

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I. Discovering the Evidence to Evaluate and Prepare your Case

A. Discovery in contested cases before PERB

1. Iowa Code section 17A.13 provides, in relevant part, that “[d]iscovery procedures applicable to civil actions are available to all parties in contested cases before an agency.”
2. Discovery procedures in civil actions are governed by the Iowa Rules of Civil Procedure. *See* Ia. R. Civ. P. 1.501 *et seq.*

B. Discovery and the arbitration process

1. No “court-like” discovery process in arbitration unless required by the parties’ collective bargaining agreement or the parties otherwise agree.
2. It has been held by courts in both the private and public sectors that the employer’s statutory duty to bargain in good faith includes the duty to furnish the certified union with relevant information needed by the union for the proper performance of its duties, and includes information necessary to prepare for and engage in collective bargaining as well as information needed to prepare for and process grievances. PERB has adopted a broader scope of this ongoing duty to provide “discovery” than applies in the private sector, and has held that a public employer has a duty to timely provide requested information to a certified union if the information sought:
 - a. is clearly specified;
 - b. may be relevant to bargaining or the processing of a grievance; and
 - c. is not otherwise protected or privileged.
3. The Iowa Supreme Court has enforced a PERB decision applying these principles and compelling the disclosure of information in the

bargaining/interest arbitration context. *See Greater Community Hospital v. PERB*, 553 N.W.2d 869 (Iowa 1996).

4. The Iowa Supreme Court has not specifically recognized the right to information in the context of grievance processing/arbitration. Does *State v. PERB*, 744 N.W.2d 357 (Iowa 2008) express the view that the right does not extend to grievance matters, or that it cannot be enforced?
5. An arbitrator's authority to issue subpoenas. Iowa Code section 979A.7 and *UE Local 893/IUP v. Schmitz*, 576 N.W.2d 357 (Iowa 1998).

II. Preparing your Case for Hearing

- A. Understanding the burden of proof and the issues that have to be proven in your case.
- B. Identifying procedural and substantive issues in the case.
- C. Scheduling the case with the arbitrator or PERB.
- D. Determining the exhibits and witnesses that will support your arguments.
- E. The rules of evidence applicable to judicial proceedings do not apply in PERB proceedings and the admission of relevant evidence in arbitration is generally without strict compliance with the rules of evidence.
- F. Working out scheduling problems and postponements with the other side.
- G. Witness preparation.
- H. The use of pre-hearing motions to limit the issues to be decided at the hearing or to exclude witness testimony.

III. Making your Case and the Record at the Hearing

- A. Presenting an "organized" case.
- B. Agreement on joint exhibits, issue, and factual stipulations.
- C. Deciding on the use of a transcript.
- D. The use of "surprise" and "newly-discovered" evidence at the hearing.
- E. Calling a witness "adversely."

- F. The wise use of objections and *voir dire*.
- G. Determining witness credibility.
- H. Testimony based on settlement discussions.
- I. Cumulative testimony.
- J. An “adverse inference” if a key witness does not testify.
- K. Offering decisions from “collateral proceedings.”
- L. Understanding the purpose of a “rebuttal” witness.
- M. Post-hearing filings.

IV. Common Mistakes Made by the Parties in Arbitration and PERB Proceedings

- A. Lack of preparation - avoid "horse-shedding."
- B. Relying on "creative arguments" to win the case at the expense of developing the facts.
- C. Failing to offer supporting exhibits or to call necessary witnesses.
- D. Offering testimony through witnesses who are not prepared to testify.
- E. Failing to work out scheduling problems for witnesses with the other side before the hearing.
- F. Trying to win a case based on “legal technicalities.”
- G. Engaging in unnecessary arguments for the purpose of "tweaking" the other side.
- H. Presenting a disorganized case to keep the other side "off balance" and intending to "clean it up" in a closing argument or post-hearing brief.
- I. Camouflaging your good theory/theories with bad ones.
- J. Trying to communicate with the arbitrator/PERB hearing officer *ex parte*.
- K. Offering unnecessarily duplicative testimony.
- L. “Bickering” during the hearing.

M. Unnecessary “reading in” of documents received in evidence.

V. Concluding Remarks and Questions

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553 N.W.2d 869
GREATER COMMUNITY HOSPITAL, Appellant,
v.
PUBLIC EMPLOYMENT RELATIONS BOARD, Appellee,
and
Greater Community Hospital Employees Association, Local 725 of the Service Employees
International Union, Intervenor-Appellee.
No. 95-269.
Supreme Court of Iowa.
Sept. 18, 1996.

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Leon R. Shearer and Becky S. Goettsch of Shearer, Templer, Pingel & Kaplan, P.C., West Des Moines, for appellant.

Jan V. Berry, Des Moines, for appellee.

Charles E. Gribble of Gribble & Prager, Des Moines, for intervenor-appellee.

J. Kirk Norris and Karen L. Hansen, Des Moines, for amicus curiae Iowa Hospital Association.

Considered by McGIVERIN, C.J., and CARTER, LAVORATO, NEUMAN, and ANDREASEN, JJ.

NEUMAN, Justice.

This controversy stems from a hospital's refusal to divulge certain salary data during collective bargaining negotiations with its employees' union. Upon challenge by the union, the Public Employment Relations Board (PERB) ruled that the hospital's recalcitrance amounted to a prohibited practice under Iowa Code section 20.10 (1995). It ordered the information disclosed, and the agency's decision was affirmed on judicial review by the district court.

On appeal, the hospital raises a host of issues centering on the relevancy of the requested information: whether the pertinent provision of the Public Employment Relations Act should be read broadly or narrowly, whether the PERB erred by not following National Labor

Relations Board precedent, and whether the requested salary data is relevant to the negotiations. Like the district court, however, we conclude that the question of disclosure is ultimately controlled by Iowa Code section 347.13(15) (1995), the statute that makes public the information sought by the union. We therefore affirm the judgment of the district court.

I. Background.

Greater Community Hospital is a public employer within the meaning of Iowa Code section 20.3(11). The record reveals that the hospital receives approximately five percent of its total revenue from property taxes. Those funds are used to pay, among other things, hospital employees' social security payroll taxes and contributions to the Iowa Public Employees' Retirement System (IPERS).

The hospital and the intervenor, Greater Community Hospital Employees Association [hereinafter "union"], are parties to a collective bargaining agreement. The agreement contained a wage and insurance reopener provision for the 1993-94 contract year. Pursuant to this provision, the union requested that the contract be reopened for negotiations related to base wages and insurance benefits.

In preparation for negotiations, the union requested the salaries of hospital administrators and supervisors (nonbargaining unit employees), including the date and amount of their most

recent pay increase. The hospital refused to release the requested information, responding simply that supervisory personnel as a whole received no more than a three percent salary increase for the prior year. The hospital also offered to provide supporting financial summaries, and agreed that two union executives could review financial records for verification of the summaries on the condition that exact salaries would not be disclosed to any other member of the union negotiating team. After further negotiations, the hospital furnished general information regarding the average salary increase enjoyed by supervisory employees over the preceding five years.

Unsatisfied with this response, the union filed a prohibited-practice complaint with PERB. The complaint alleged numerous violations of Iowa Code chapter 20, the Public Employment Relations Act. In particular, the complaint claimed violation of Iowa Code sections

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20.10(1) (refusal to negotiate in good faith), (2)(a) (interference with exercise of employee rights), (2)(e) (refusal to negotiate collectively with union representative), (2)(f) (denial of certification rights), and (2)(g) (refusal to participate in good faith in impasse procedures).

Following hearing, PERB ruled that the salary information requested was relevant under either its own broad relevancy standard or the more restrictive standard developed by the NLRB for private sector negotiations. In addition, PERB concluded that the information sought was public, not privileged, because tax revenues were used to pay employees' social security payroll taxes and IPERS contributions. The district court affirmed PERB on judicial review, and this appeal by the hospital followed.

II. Scope of Review.

In judicial review proceedings, the district court functions in an appellate capacity to

correct errors of law. Iowa Code § 17A.19(8); Iowa Planners Network v. Iowa State Commerce Comm'n, 373 N.W.2d 106, 108 (Iowa 1985). On our subsequent review, we determine whether the district court correctly applied the law. Although we give weight to PERB's interpretation of chapter 20, the agency's legal conclusions are not binding on us. Charles City Community Sch. Dist. v. PERB, 275 N.W.2d 766, 769 (Iowa 1979). We are obliged to make an independent determination of the meaning of pertinent statutes. *Id.*

III. Analysis.

Iowa Code section 20.10(1) imposes a duty upon public employers and public employees to "negotiate in good faith." This duty carries with it an obligation on the employer's part to supply the union with information relevant and necessary to effectively represent the employees in contract negotiations. *NLRB v. Acme Indus. Co.*, 385 U.S. 432, 435-36, 87 S.Ct. 565, 568, 17 L.Ed.2d 495, 499 (1967); *San Diego Newspaper Guild v. NLRB*, 548 F.2d 863, 866 (9th Cir.1977); *Waterloo Educ. Ass'n*, PERB Case No. 921 (1977). This appeal centers on the parties' disagreement over the precise dimension of that relevancy standard.

Rather than adopting federal precedent in its evaluation of information requests, PERB decisions have established that a public employer has a duty to provide information that (1) is clearly specified, (2) may be relevant to the bargaining process, and (3) is not otherwise protected or privileged. *Washington Educ. Ass'n*, PERB Case No. 1635 (1980). This "may be relevant" standard requires disclosure unless the requested information "plainly appears irrelevant." *Id.* at 3.

Claiming this standard departs from the narrower standard adopted by the NLRB in private-sector negotiation,¹ the hospital seeks reversal on the ground PERB's application of its own standard violates Iowa Code section 17A.19. To sustain its claim, however, the hospital must prove the agency's decision is unreasonable or characterized by abuse of

discretion. See Iowa Code § 17A.19(8)(g). In that context, we have defined unreasonableness as "action in the face of evidence to which there is no room for difference of opinion among reasonable minds or not based on substantial evidence." *Office of Consumer Advocate v. Iowa State Commerce Comm'n*, 419 N.W.2d 373, 374 (Iowa 1988). The hospital cannot make that showing here.

This court has long held that federal labor relations decisions may be "illuminating and instructive" on questions arising under Iowa Code chapter 20, but such decisions "are neither conclusive nor compulsory." *City of Davenport v. PERB*, 264 N.W.2d 307, 313 (Iowa 1978). Iowa Code section 20.6(5) authorizes PERB to "[a]dopt rules ... as it may deem necessary to carry out the provisions of this chapter." Determining rules and procedures for the disclosure of information relevant to bargaining clearly falls within PERB's authority. The agency has long maintained that important differences between

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bargaining in the public and private sectors justify departure from NLRB policy on the question of discovery:

The spectrum of relevant information for public sector employee organizations in Iowa is much broader than would be normally considered relevant for private sector unions because the public sector employee organization in Iowa faces a prospect of preparing a fact-finding and/or arbitration presentation. An employee organization at the fact-finding or arbitration stage is required to justify the reasonableness of its proposals before a third party neutral who is unlikely to be familiar with the financial situation of the employer or the wage history of the bargaining unit employees.

Iowa Western Community College, PERB Case No. 702 (1976).

Like the district court, we cannot say that PERB's explanation for its standard lacks reasoning or demonstrates an abuse of discretion. The court properly recognized PERB's discretionary authority on this point.

The hospital argues alternatively that, even applying PERB's broad standard, the salary data being sought by the union is plainly irrelevant to these proceedings. The argument is weakened, however, by many of the same factors justifying PERB's application of the broad relevancy standard. In determining the reasonableness of competing offers, an arbitrator would be required to consider, among other things, "the ability of the public employer to finance economic adjustments." Iowa Code § 20.22(9). The statute makes this information relevant regardless of the employer's rationale for rejecting the union proposal. Under the record before us, we think it reasonable for PERB to conclude that the salaries of nonbargaining unit employees, and the amounts and frequency of their raises, could impact an employer's ability to finance the proposed wage increase for bargaining unit employees. If the parties reached an impasse, the union would need this information to make its case to the arbitrator.

Under the three-part test established by PERB, the question remains whether the information, even if relevant, is privileged and not subject to disclosure. The hospital claims that customary confidentiality accorded administrators' salaries, and the potential for misuse if such salary details were revealed, outweigh any consideration of relevance. PERB and the district court rejected this argument, however, in the belief that such records are subject to public examination in accordance with Iowa Code section 347.13(15). The statute, which governs the duties and powers of county hospital boards of trustees, provides:

There shall be published quarterly in each of the official newspapers of the county as selected by the board of supervisors pursuant to section 349.1 the schedule of bills allowed and there shall be published annually in such newspapers the schedule of salaries paid by job

classification and category, but not by listing names of individual employees. The names, addresses, salaries, and job classification of all employees paid in whole or in part from a tax levy shall be a public record and open to inspection at reasonable times as designated by the board of trustees.

Iowa Code § 347.13(15) (emphasis added).

The hospital argues strenuously that section 347.13(15) limits disclosure unless employee salaries are paid from public funds. Because the hospital uses the tax levy to pay payroll taxes and IPERS, not salaries, it claims public disclosure is not required. As wisely noted by the district court, however, the statute makes no such distinction between "pay" and "salary."

By its terms, section 347.13(15) compels disclosure of "names, addresses, salaries, and job classification of all employees paid in whole or in part from a tax levy," not--as the hospital suggests--the names, addresses, and salaries of all employees whose salaries are paid from such sources. We are not at liberty to add to the statute the qualifying language the hospital suggests. Nor would it be in keeping with Iowa Code chapter 22, the Open Records Act, to do so. See Iowa Code §§ 22.1(3) (defining "public records " to include any records of any county facility "supported in whole or in part with

property tax revenue"); 22.2(1) (giving every person

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the right to examine "public records" as defined by statute).

We have long recognized that open access to public records demands a liberal reading of chapter 22 and a narrow construction of statutory exemptions from disclosure. *City of Dubuque v. Telegraph Herald, Inc.*, 297 N.W.2d 523, 526 (Iowa 1980). PERB and the district court interpreted section 347.13(15) consistently with this standard. Common sense dictates that salary records open to the public should be open for examination by union representatives engaged in collective bargaining negotiations with a public employer. The district court was correct in so holding, and its order compelling disclosure must be affirmed.

AFFIRMED.

1 "Where the request is for information concerning employees outside of the bargaining unit, the Union must show that the requested information is relevant to bargainable issues." *San Diego Newspaper Guild*, 548 F.2d at 867-68 (citing cases).

744 N.W.2d 357
STATE of Iowa, Appellee
v.
PUBLIC EMPLOYMENT RELATIONS BOARD, Appellant, and
AFSCME Iowa Council 61, Intervenor.
No. 06-0430.
Supreme Court of Iowa.
February 8, 2008.
[744 N.W.2d 358]
Jan V. Berry, Des Moines, for appellant.
Thomas J. Miller, Attorney General, and Robert K. Porter, Assistant Attorney General, for
appellee.
TERNUS, Chief Justice.

The appellant, Public Employment Relations Board (PERB), ordered the State to produce documents requested by the intervenor union, AFSCME Iowa Council 61, for use in several employee grievance proceedings. The State sought judicial review, claiming PERB's order exceeded the authority granted to it under Iowa Code chapter 20 (2001) because the State's failure to disclose the documents was not a willful violation of that statute. The district court agreed, ruling PERB could not provide relief to the union unless PERB found a willful violation.

On appeal to this court, PERB contends it has statutory authority to remedy non-willful, as well as willful, violations of chapter 20. After considering the arguments of the parties and relevant authorities, we

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agree with the district court that PERB exceeded its authority. Therefore, we affirm the district court's reversal of PERB's order.

I. Background Facts and Proceedings.

This appeal had its genesis in the State's discipline of bargaining unit employees represented by the union. In the summer of 2002, these employees were disciplined for inappropriate email usage. The employees then pursued the grievance procedure outlined in the collective bargaining agreement, which eventually led to binding arbitration. In preparation for the arbitration hearings, the union asked the State to produce records of

discipline imposed on management employees for similar misconduct. The State refused to produce these records, claiming they were confidential.

Shortly thereafter, the union filed two prohibited practice complaints with PERB. In these complaints, the union asserted the State had violated Iowa Code section 20.10(2)(a), (b), and (f) in refusing to produce the requested documents in the grievance process. An evidentiary hearing was held on these complaints before an administrative law judge (ALJ).

While the parties were awaiting a decision from the ALJ, the union served a *subpoena duces tecum* in one of the grievance proceedings, requesting various documents regarding the investigation and discipline of all State employees for email usage in July of 2002. The State filed a motion to quash, which was sustained in part and overruled in part by an arbitrator on September 8, 2003.

Shortly after the arbitrator quashed, in part, the union's subpoena, the ALJ issued a proposed decision on the union's prohibited practice complaints. The ALJ concluded the State's refusal to produce the requested documents violated its "statutory duty to bargain in good faith" under section 20.9. Although not cited by the union in its complaints, section 20.10(1) makes it a prohibited practice "to *willfully* refuse to negotiate in good faith with respect to the scope of negotiations defined in section 20.9."

Iowa Code § 20.10(1) (emphasis added). The ALJ stated there was no evidence in the record that would establish the willfulness of the State's violation of section 20.9. Nonetheless, the ALJ held "PERB's remedial authority is not limited to only those situations where prohibited practices have been established, but also extends to 'ordinary' violations." Accordingly, the ALJ ordered the State to disclose the requested information "for the limited purpose of preparing for and litigating these specific grievances." On appeal to the agency, the ALJ's proposed decision was adopted by PERB in spite of its knowledge of the conflicting decision by the arbitrator.

The State, sought judicial review in the district court. After analyzing the statutory provisions, the district court held PERB did not have the power to remedy "ordinary," i.e., nonwillful, violations of section 20.10. Therefore, the district court reversed PERB's decision. PERB has appealed.

II. Scope of Review.

The narrow issue before this court is whether Iowa Code chapter 20 provides for "ordinary" violations of section 20.10, and if so, whether the statute gives PERB authority to remedy such violations.¹ To

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resolve this issue, we must interpret the statute. Generally, the interpretation of a statute is a matter of law for this court. *See Insituform Techs., Inc. v. Employment Appeal Bd.*, 728 N.W.2d 781, 800 (Iowa 2007). "Nevertheless, we are required to give appropriate deference to the agency's interpretation in certain situations." *Id.* Under the Iowa Administrative Procedure Act, we give deference to an agency's interpretation of a statute if interpretation of the statute "has clearly been vested by a provision of law in the discretion of the agency." Iowa Code § 17A.19 (10) (l) (providing for reversal under such circumstances only if agency's interpretation was "irrational, illogical, or wholly unjustifiable").

Upon our review of chapter 20, we conclude PERB has not been granted interpretive discretion with respect to that statute. In relevant part, section 20.1 provides:

The general assembly declares that the purposes of the public employment relations board established by this chapter are to *implement* the provisions of this chapter and *adjudicate* and *conciliate* employment-related cases involving the state of Iowa and other public employers and employee organizations.

Id. § 20.1 (emphasis added). In addition, this section describes the powers and duties of PERB to include determining appropriate bargaining units, adjudicating prohibited practice complaints, fashioning appropriate remedial relief for violations of chapter 20, acting as arbitrators, providing mediators, collecting and disseminating information, and assisting the attorney general in preparation of legal briefs. *See id.* Section 20.6 provides further detail for the duties and powers of PERB, requiring the board to administer the provisions of chapter 20, collect data, establish minimum qualifications for arbitrators and mediators and their compensation, hold hearings, and adopt rules "to carry out the purposes of this chapter." *See id.* § 20.6.

While it is obvious the legislature has afforded PERB extensive powers to implement and administer the provisions of chapter 20, it is not clear that the legislature intended to delegate interpretive powers to PERB. *See Waterloo Educ. Ass'n v. Iowa Pub. Employment Relations Bd.*, 740 N.W.2d 418, 420 (Iowa 2007) (holding "whether a proposal is a mandatory subject of collective bargaining, as defined by Iowa Code section 20.9, has not been explicitly vested in PERB's discretion"). *Compare Mosher v. Dep't of Inspections & Appeals*, 671 N.W.2d 501, 509 (Iowa 2003) (holding state agency's general regulatory authority over health care facilities did not qualify as a legislative delegation of discretion to elaborate on the statutory definition of "dependent adult"), *with Iowa Ass'n of Sch. Bds. v. Iowa Dep't of Educ.*, 739 N.W.2d 303, 307 (Iowa 2007) (noting statute provides the

director of the department of education with the duty to "[i]nterpret the school laws" and concluding interpretive power had been clearly vested in department). Thus, our review is for correction of errors of law under section 17A.19(10)(c). See *Waterloo Educ. Assn*, 740 N.W.2d at 419.

III. Guiding Principles of Statutory Interpretation.

When we interpret a statute, our primary goal is to ascertain the legislature's intent. *State Pub. Defender v. Iowa Dist. Ct.*, 663 N.W.2d 413, 415 (Iowa 2003). To determine the legislature's intent, we first examine the language of the statute. *Id.*, "If the statutory language is plain and the meaning clear, we do not search for

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legislative intent beyond the express terms of the statute." *Horsman v. Wahl*, 551 N.W.2d 619, 620-21 (Iowa 1996). We seek a "reasonable interpretation that will best effect the purpose of the statute and avoid an absurd result." *IBP, Inc. v. Harker*, 633 N.W.2d 322, 325 (Iowa 2001). Nonetheless, "[w]e will not interpret a statute so as to render any part of it superfluous." *Am. Legion v. Cedar Rapids Bd. of Review*, 646 N.W.2d 433, 439 (Iowa 2002).

IV. Discussion.

The union filed the prohibited practice complaints commencing this action pursuant to Iowa Code sections 20.10 and 20.11. Section 20.10 defines a "prohibited practice." Three subsections of section 20.10 set forth conduct that can constitute a prohibited practice. Each subsection requires that the party charged with the prohibited conduct act "willfully."² Iowa Code § 20.10(1), (2), (3). Section 20.11 sets forth the procedure that must be followed to charge a party with a "prohibited practice violation."

PERB acknowledges these sections do not encompass nonwillful or ordinary violations. So, to sustain its position that it has the authority to

remedy such violations, PERB relies on the general statement of its "powers and duties" set out in section 20.1. That section states PERB has the power and duty to "[f]ashion[] appropriate remedial relief for violations of this chapter, including but not limited to the reinstatement of employees with or without back pay and benefits." *Id.* § 20.1(3). Because PERB found the State violated section 20.9, it believes it can remedy this violation under the authority of section 20.1(3).

To support this interpretation of section 20.1(3), PERB asserts that, if the legislature had meant to restrict its power to provide remedial relief to prohibited practice violations, it would have referred in section 20.1(3) to "prohibited practices as defined in section 20.10," not "violations of this chapter." In addition, PERB argues that nonwillful violations of chapter 20 are just as likely to undermine the purposes of chapter 20 as willful violations. Consequently, PERB reasons, it makes sense that the legislature would give it the power to remedy nonwillful violations of chapter 20. We are not persuaded by PERB's arguments.

In outlining the procedure for pursuing a prohibited practice complaint, section 20.11 refers to such a practice as a "violation" several times. *Id.* § 20.11 (stating, for example, a complaint must be filed "within ninety days of the alleged violation," "the board may conduct a preliminary investigation of the alleged violation," and the hearing shall be set "in the county where the alleged violation occurred"). Consequently, the legislature's reference in section 20.1(3) to "violations of this chapter" does not necessarily reference anything more than prohibited practice violations.

But regardless of whether the legislature had in mind violations of chapter 20 other than prohibited practice violations when it adopted section 20.1(3), we are convinced it did not have in mind nonwillful violations of section 20.10. To interpret section 20.1(3) as authority for PERS to remedy nonwillful violations otherwise falling within the purview of section 20.10

would render sections 20.10 and 20.11 largely superfluous. There would be no

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need for a party to pursue relief under these sections, which require a showing of willfulness, if the same relief could be obtained without such proof. Even if, as asserted by PERB, PERB might choose a different remedy for nonwillful violations than for willful violations, there is nothing in chapter 20 that would restrict the available remedies when a violation is nonwillful. In fact, the remedy granted by PERB in this case—production of the requested documents—is no different than the remedy that would have been available had the union proved willfulness. In short, the union failed to prove a prohibited practice, yet was accorded the remedy it sought. We conclude the practical effect of the interpretation adopted by PERB is to render the requirement of "willfulness" in section 20.10 superfluous. We cannot adopt an interpretation of section 20.1(3) that is inconsistent with the plain language of section 20.10(1).

PERB argues strenuously, that its inability to remedy nonwillful violations of section 20.9 would undermine the purpose of chapter 20. Even if there are instances when PERB intervention would further the legislative goals underlying chapter 20, the present circumstances are not one of those instances. Arbitration is valued as an alternative dispute resolution mechanism because it provides a speedy and efficient remedy. *See generally Wesley Ret. Servs., Inc. v. Hansen Lind Meyer, Inc.*, 594 N.W.2d 22, 27 (Iowa 1999) (interpreting arbitration statute to promote speed and efficiency of process); *Modern Piping, Inc. v. Blackhawk Automatic Sprinklers, Inc.*, 581 N.W.2d 616, 621 (Iowa 1998) (noting purpose of arbitration is "to obtain a speedy, inexpensive and final resolution of disputes"), *overruled on other grounds by Wesley Ret. Servs., Inc.*, 594 N.W.2d at 29. Furthermore, this court has observed that "[a] refined quality of justice is not the goal in arbitration matters. Indeed such a goal is deliberately sacrificed in favor of a sure and speedy resolution." *LCI, Inc. v. Chipman*,

572 N.W.2d 158, 162 (Iowa 1997). If parties involved in the grievance process could take every dispute to PERB for resolution, the goals of speed and efficiency in the arbitration process would be lost or at least diminished. Here, there is the additional problem of inconsistent decisions. Even if the arbitrator incorrectly decided that the State was not required to produce the requested information, PERB's refined sense of justice must give way to the speedy resolution of the parties' dispute.

In summary, we agree with the State that section 20.10(1) is the enforcement mechanism for a violation of section 20.9. Because section 20.10(1) requires willfulness, PERB has no authority to remedy a nonwillful violation of section 20.9.

V. Conclusion and Disposition.

Iowa Code section 20.1(3) does not authorize PERB to remedy a violation of chapter 20 that would fall within the definition of "prohibited practice" had the violation been committed willfully. Under PERB's decision, the State's conduct violated section 20.9 and would have constituted a prohibited practice under section 20.10(1) but for the fact the State did not act willfully. Consequently, PERB had no authority to remedy the State's nonwillful violation of section 20.9.

The district court correctly held PERB exceeded its authority when, having ruled the union failed to establish a prohibited practice under section 20.10(1), it nonetheless ordered the State to produce the documents requested by the union. Therefore, we affirm the district court's reversal of PERB's decision.

AFFIRMED.

Notes:

1. On judicial review and again on appeal, the State challenges PERB's ruling that the State violated section 20.9. Because we agree with the district court that PERB has no authority to remedy a nonwillful

violation of section 20.9, we need not determine whether PERB correctly determined the State violated that provision of the statute.

2. For example, subsection 20.10(2) begins with the following language: "It shall be a prohibited practice

for a public employer or the employer's designated representative *willfully* to...." (Emphasis added.) Similar language is employed in subsection (1) and subsection (3).

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576 N.W.2d 357
UE LOCAL 893/IOWA UNITED PROFESSIONALS, Appellant,
v.
Dale L. SCHMITZ, Appellee.
No. 96-1812.
Supreme Court of Iowa.
March 25, 1998.

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Matthew Glasson of Glasson, Sole, McManus & Combs, P.C., Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General, and Diane M. Stahle, Special Assistant Attorney General, for appellee.

Considered by McGIVERIN, C.J., and HARRIS, LAVORATO, NEUMAN, and TERNUS, JJ.

LAVORATO, Justice.

This appeal presents the following question: When a public employment collective bargaining agreement provides for binding arbitration of grievances, do arbitrators have the authority to issue a subpoena duces tecum? In a union's application to enforce such a subpoena, the district court decided no authority exists to issue the subpoena. We disagree. We reverse and remand for further proceedings.

I. Facts.

A collective bargaining agreement (agreement) exists between the State of Iowa and UE Local 893/Iowa United Professionals (Union). The present dispute arises out of a grievance filed pursuant to the agreement. The grievant is a social worker in the Iowa department of human services. The department had terminated her employment for cause. The grievance ultimately reached arbitration.

Before the arbitration hearing, the Union asked the arbitrator to issue a subpoena duces tecum to Dale Schmitz, the regional director of

the department. The subpoena required Schmitz to give testimony and bring with him "any and all letters of discipline, including but not limited to reprimands and suspensions issued to Dale Carter and Karen DeVore between June 1, 1995 and December

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31, 1995." Carter and DeVore are department employees and were the grievant's supervisors. The agreement does not cover Carter and DeVore because both are supervisory employees.

The arbitrator issued the subpoena. Later, in a letter to the arbitrator, the Union asked that the State produce the requested documents and supply them to the Union before the scheduled arbitration hearing. In a telephone hearing, the State objected to the issuance of the subpoena on the following grounds. First, the arbitrator did not have subpoena power. Second, the subpoena requested documents relating to supervisory employees who were not covered by the agreement. Last, the requested documents constituted confidential personnel records protected from disclosure by Iowa Code section 22.7(11) (1995).

In a letter following the telephone hearing, the arbitrator refused to order production of the records. The arbitrator also put the Union on notice that the State was asserting the arbitrator lacked subpoena authority. The arbitrator further advised the Union that it should immediately take any court action it deemed appropriate to

obtain the documents and presence of the supervisors for the arbitration hearing.

The Union did not take any court action as the arbitrator had suggested. Schmitz appeared at the arbitration hearing but without the requested documents. The arbitrator concluded the arbitration hearing but held the record open pending resolution of the subpoena power issue.

II. Proceedings.

Following the arbitration hearing, the Union brought this contempt action against Schmitz to enforce the subpoena. See Iowa Code § 622.76. Schmitz resisted, contending the arbitrator lacked subpoena power, the records sought were confidential, and the Union had no right to subpoena personnel records of employees outside of the bargaining unit.

Following the contempt hearing, the district court ruled that the arbitrator lacked subpoena power and denied the Union's application to enforce the subpoena through contempt. The court did not reach the other two contentions Schmitz had raised in his resistance.

The Union appeals, contending the district court erred when it concluded the arbitrator lacked subpoena power.

III. Arbitrators and Subpoena Power.

The Union first contends Iowa Code chapter 679A authorizes arbitrators to issue subpoenas compelling the attendance of witnesses and the production of records, and should control here. Iowa Code chapter 679A is Iowa's version of the Uniform Arbitration Act.

Iowa Code section 679A.1(2) provides that [a] provision in a written contract to submit to arbitration a future controversy arising between the parties is valid, enforceable, and irrevocable unless grounds exist at law or in equity for the revocation of the contract. This subsection shall not apply to any of the following:

....

b. A contract between employers and employees.

The section 679A.1(2)(b) exclusion applies only to the enforceability of arbitration provisions in a collective bargaining agreement; the exclusion does not apply to the remaining provisions of the Act. *International Ass'n of Machinists v. Victor Fluid Power*, 369 N.W.2d 805, 807 (Iowa 1985). One of those remaining provisions is Iowa Code section 679A.7(1), which authorizes arbitrators to "issue subpoenas for the attendance of witnesses and for the production of ... documents..." Thus, notwithstanding that a party to a collective bargaining agreement cannot compel arbitration under chapter 679A, an arbitrator has the authority to issue subpoenas once parties to such an agreement are in arbitration.

The collective bargaining agreement in *Victor Fluid* involved parties in the private sector. See *id.* at 806. For this reason, the district court here chose not to follow *Victor Fluid*, apparently believing that chapter 679A does not apply to public sector labor arbitrations. On this point, the district court

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found that "in the absence of a contractual provision between the union and the State of Iowa granting to the arbitrator subpoena powers, no such powers exist." Schmitz takes the same position on appeal.

As the Union points out, chapter 679A draws no distinction between public and private sector labor arbitrations. From this, the Union argues, the logical conclusion follows that the legislature intended chapter 679A to apply equally to public and private sector labor arbitrations.

The Union makes a strong argument. In support of its argument, the Union cites to our prior cases in which we have not recognized any significant distinction between public and private sector labor arbitration cases. See, e.g.,

Sergeant Bluff-Luton Educ. Ass'n v. Sergeant Bluff-Luton Community Sch. Dist., 282 N.W.2d 144, 147 (Iowa 1979) (adopting federal case authority favoring arbitration, stating: "[w]e adopt the rationale of the Steelworkers cases for even though this is a public employee agreement we have discovered no tenable basis for distinction on that ground alone").

That brings us to Schmitz's contention that an arbitrator in public sector cases has no subpoena power unless the parties agree otherwise in their collective bargaining agreement.

A. Relationship between Iowa Code chapters 20 and 679A. Schmitz sees the issue as one involving the relationship between Iowa Code chapters 20 and 679A. Chapter 20 deals with all aspects of public employee collective bargaining, whereas chapter 679A deals only with arbitration. Chapter 20 does not specifically confer subpoena power on arbitrators; chapter 679A does. Schmitz insists that the more specific statute, chapter 20 dealing with public employees collective bargaining, must prevail over the more general statute, chapter 679A, which provides for arbitration proceedings in general.

Schmitz argues that a close reading of chapter 20 supports his contention that an arbitrator in public sector cases has no subpoena power unless the parties agree otherwise in their collective bargaining agreement. Thus, Schmitz concludes, chapter 679A plays no part in the subpoena power issue.

In support of his contention, Schmitz relies on two sections in chapter 20: Iowa Code sections 20.9 and 20.18. For purposes of negotiation, the law categorizes bargaining topics affecting public employees as mandatory (shall meet to negotiate) and permissive (other matters mutually agreed upon). *City of Fort Dodge v. Iowa PERB*, 275 N.W.2d 393, 395 (Iowa 1979). When a topic is mandatory, the parties must negotiate on it, and a failure to resolve the issue can lead to final binding arbitration. *Id.*; Iowa Code § 20.9.

One such mandatory topic includes "grievance procedures for resolving any questions arising under the [collective bargaining] agreement." Iowa Code § 20.9. Iowa Code section 20.18 sets forth options available to the parties in determining which grievance procedures to follow. For example, the parties may choose binding arbitration. *Id.* § 20.18. If they do, section 20.18 provides the arbitrator may not "change or amend the terms, conditions or applications of the collective bargaining agreement." *Id.*

Schmitz points out that the parties here have chosen binding arbitration for grievances and have limited the scope of the arbitrator's authority in accordance with section 20.18. The parties' agreement, however, neither provides for subpoena power nor refers to any statutory authority that would authorize such power. For this reason, Schmitz concludes, "it would be contrary to the language and intent of chapter 20 to require the parties to look outside of the collective bargaining agreement for direction on how a grievance should be handled and the scope of an arbitrator's authority." In short, because the parties did not contract to grant an arbitrator subpoena power, chapter 679A cannot fill the void.

The Union suggests Schmitz's argument is based on the incorrect assumption that parties can by contract cloak arbitrators with subpoena power. The Union points out that the district court made the same incorrect assumption: "The Court finds in the absence of a contractual provision between the union and the State of Iowa granting to the arbitrator subpoena powers, no such powers exist."

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In support of its argument, the Union asserts that the power to issue subpoenas is a legal power, enforceable by contempt. The power to issue subpoenas, the Union further asserts, would apply to third parties who might be witnesses, not just parties to the contract, or

in privity to the contracting parties. Thus, the Union concludes, if chapter 679A does not apply, then the parties surely cannot by contract create the legal authority to issue subpoenas. The Union further concludes that if chapter 679A does apply to public sector labor arbitrations, then the parties cannot change the law or its application by contract.

The Union is correct in its assertion that the power to issue a subpoena is a legal power. A subpoena duces tecum is defined as

[a] court process, initiated by a party in litigation, compelling production of certain specific documents and other items, material and relevant to facts in issue in a pending judicial proceeding, which documents and items are in the custody and control of a person or body served with process.

Black's Law Dictionary 1426 (6th ed.1990) (emphasis added); see also Iowa Code § 622.65 (subpoena duces tecum compels person to attend and bring required book or writing). As the Union points out, subpoenas are enforceable by contempt, a court process. Iowa Code § 622.76.

In addition, in the absence of a statute, arbitrators have no power to compel witnesses to appear in proceedings before them. 4 Am.Jur.2d Alternative Dispute Resolution § 189, at 215 (1995); see also Clarence M. Updegraff & Whitley P. McCoy, *Arbitration of Labor Disputes* 199 (2d ed. 1961) ("At common law there was no power in the arbitrator to compel the attendance of witnesses."). Although we have never confronted the issue relative to arbitrators, we have held administrative agencies must have statutory authority to issue subpoenas. See *Iowa City Human Rights Comm'n v. Roadway Express, Inc.*, 397 N.W.2d 508, 510 (Iowa 1986) (holding that administrative subpoenas are entitled to judicial enforcement where the subpoena is within statutory authority of agency, reasonably specific, not unduly burdensome, and reasonably relevant to matters under investigation).

Without a statute granting arbitrators subpoena powers, parties to collective bargaining agreements have no way to enforce obedience to any subpoena that arbitrators may issue to witnesses other than the parties, or persons in privity with the parties. As to such nonparty and nonprivity witnesses, any agreement authorizing arbitrators to issue subpoenas is an exercise in futility.

For these reasons, we conclude the legislature did not intend to include subpoena power for arbitrators in the mandatory topic "grievance procedures" of section 20.9. A contrary conclusion would be a stretch. See *Welp v. Iowa Dep't of Revenue*, 333 N.W.2d 481, 483 (Iowa 1983) ("In considering legislative enactments we should avoid strained, impractical or absurd results."). Moreover, such a conclusion would be contrary to our previous holdings that we construe the list of mandatory topics narrowly and restrictively. See, e.g., *City of Ft. Dodge*, 275 N.W.2d at 398.

By "procedures," the legislature more likely meant procedures for resolving contract disputes. As the Union argues, these typically could include such matters as a description of the form of the grievance, the number and steps in the grievance procedure, the persons involved at each step, the time limits for completion of each step or appeal to the next, whether arbitration is available and under what circumstances, and the number of arbitrators involved and how they are selected.

Having concluded that the parties could not contract to give the arbitrator power to issue a subpoena, we are left with the prospect of chapter 679A which does give such power. That brings us to Schmitz's second contention against looking to chapter 679A for such power.

B. Harmonizing chapter 20 and chapter 679A. Schmitz contends there are three specific areas of conflict between chapter 20 and chapter 679A, making it impossible to harmonize the two chapters. Those

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include the right to legal representation, the costs of arbitration, and the ability to have binding arbitration.

In effect, Schmitz is invoking a rule of statutory construction involving conflicting statutes. Iowa Code section 4.7 codifies the rule:

If a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision.

The rule comes into play provided two conditions are met: the two statutes cover the same subject matter and are irreconcilable. *State v. Peters*, 525 N.W.2d 854, 857 (Iowa 1994). Here chapter 20 says nothing about the authority of an arbitrator to issue a subpoena; section 679A.7 does. In these circumstances, we do not have two statutes speaking to the same matter, unless we can say that the legislature's silence in chapter 20 means arbitrators in public sector arbitrations do not have subpoena power. Such a conclusion would be another stretch. We know of no rule of statutory construction that calls for such a conclusion.

Thus, we reach the conclusion that nothing in chapter 20 or in chapter 679A prevents application of section 679A.7 to public sector arbitrations. In short, pursuant to section 679A.7 arbitrators in public sector arbitrations have subpoena powers.

Our conclusion furthers the legislative preference for resolving issues through arbitration, if possible. *Sergeant Bluff-Luton*, 282 N.W.2d at 146-47. In addition, our conclusion furthers the legislature's policy of ensuring labor peace: employees would not have to fret over grievances if arbitrators had the power to issue a subpoena duces tecum and resolve matters quickly. See Iowa Code § 20.1 ("The general assembly declares that it is the public policy of the state to promote harmonious and cooperative relationships between government and its employees"); see also Iowa Code § 4.6(1) (in ascertaining legislative intent, court looks to object sought to be attained). Moreover, our conclusion cuts both ways: the State may find itself in the position of wanting to subpoena union witnesses and records under the union's control. After all, justice is a search for the truth and the "function of an arbitrator is quasi-judicial." *Koopman v. Farmers' Mut. Hail Ins. Assoc.*, 209 Iowa 958, 962, 229 N.W. 221, 222 (1930). Without such subpoena power, discovering truth is left to chance.

IV. Disposition.

Because we conclude Iowa Code section 679A.7 gives arbitrators in public sector arbitrations subpoena powers, we reverse the district court's contrary ruling. We remand for further proceedings consistent with this opinion.

REVERSED AND REMANDED.