

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

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

Petitioners,

v.

**IOWA PUBLIC EMPLOYMENT
RELATIONS BOARD,**

Respondent,

UNI-UNITED FACULTY

Intervenor.

CASE NO. CVCV009268

ORDER

The Petitioner's Petition for Judicial Review came before the Court for oral argument and submission on July 26, 2013. The Petitioners, Board of Regents, State of Iowa, and the University of Northern Iowa, were represented by their counsel, George A. Carroll. The Respondent, Iowa Public Employment Relations Board, was represented by its counsel, Ann M. Smisek. The Intervenor, UNI-United Faculty, was represented by its counsel, Nathan Willems. After reviewing the court file, including the briefs filed by all parties, this Court now finds as follows:

BACKGROUND FACTS AND PROCEDURAL HISTORY

Petitioner–Employer Board of Regents (“Regents”) and Intervenor–Union UNI-United Faculty (“Union”) are parties to a collective bargaining agreement. (Pet. for Dec. Order ¶¶ 1–4; Ex. 3). On or about March 5, 2012, the Regents unilaterally approved an Early Retirement Incentive Program—captioned an Early Separation Incentive Program (“ESIP”)—for employees

represented by the Union. (Pet. for Dec. Order ¶ 5; Ex. 1). The Regents stated the ESIP “will be used as a tool to shape, redirect, and focus the faculty work force.” (Ex. 1 at 2). Interested employees must meet eligibility requirements and submit an application to participate in the ESIP. (Ex. 2 at 1). Officials approve or deny individual applications based on “the best interest of the University of Northern Iowa.” (Ex. 2 at 1). Once accepted into the program, employees must retire or resign. (Ex. 2 at 1). Participating employees receive cash payments based on accrued sick leave, one year of salary, and eighteen months of insurance premiums. (Ex. 2 at 1).

On March 19, 2012, the Union filed for a declaratory order from the Respondent Iowa Public Employment Relations Board (“PERB”). (Pet. for Dec. Order). The Union asked PERB to declare the ESIP a mandatory subject of bargaining, which requires the Petitioners to negotiate the terms in good faith with the Union. (Pet. for Dec. Order ¶¶ 7–9). On April 16, the Union and the Petitioners participated in oral arguments before PERB. (Hearing Audio).

On May 30, 2012, PERB issued the Declaratory Order. (Dec. Order). PERB found “[t]he predominant purpose, goal, characteristic, or topic of the ESIP is the reduction of the number of tenured faculty in certain program areas.” (Dec. Order at 8). PERB based this decision on the Regents’ “description of the ESIP as ‘a tool to shape, redirect, and focus the faculty work force’ at UNI and [on] its acknowledgement that the ESIP is designed to induce eligible employees to voluntarily leave their employment.” (Dec. Order at 8). PERB classified the ESIP as “procedures for staff reduction,” and rejected the argument that the term only applies to involuntary staff reductions. (Dec. Order at 9–10). PERB also concluded the ESIP does not qualify as “wages” or “insurance.” (Dec. Order at 10–11).

On June 15, 2012, the Petitioners filed a Motion for Reconsideration, which asked PERB to declare the ESIP payments are a retirement benefit and an illegal subject of bargaining.

(Motion for Recons.). On June 29, PERB issued its Ruling on Motion.¹ (Ruling on Mot.). PERB found the ESIP “is much more akin to the one-time-at-separation payments” than retirement benefits. (Ruling on Mot. at 4). PERB noted employees need not retire to receive benefits, and found “[t]he incentive no more augments or supplements statutory retirement benefits than does employees’ post-separation receipt of their final paychecks or severance benefits which may be required by a collective bargaining agreements or employer policies.” (Ruling on Mot. at 5). Accordingly, PERB denied the Motion for Reconsideration. (Ruling on Mot. at 5).

The Petitioners then timely filed this Petition for Judicial Review. The Petitioners argue PERB used an erroneous test to classify the ESIP, and PERB erroneously determined the ESIP is a mandatory subject of bargaining and not a permissive or illegal subject.

STANDARD OF REVIEW

On judicial review of agency action, the Court functions in an appellate capacity to apply the standards set forth in Iowa Code section 17A.19. *Iowa Planners Network v. Iowa State Commerce Comm’n*, 373 N.W.2d 106, 108 (Iowa 1985). The Court’s review is limited to corrections of errors of law and is generally not de novo. *Harlan v. Iowa Dep’t of Job Serv.*, 350 N.W.2d 192, 193 (Iowa 1984). The Court has no original authority to declare the rights of the parties. *Office of Consumer Advocate v. Iowa State Commerce Comm’n*, 432 N.W.2d 148, 156 (Iowa 1988). Nearly all disputes in the field of administrative law are won or lost at the agency level. *Iowa-III. Gas & Elec. Co. v. Iowa State Commerce Comm’n*, 412 N.W.2d 600, 604 (Iowa 1987). Judgment calls are to be left to the agency. *Burns v. Bd. of Nursing*, 495 N.W.2d 698, 699 (Iowa 1993). The Court may affirm the agency decision or remand to the agency for further

¹ PERB responded to the Petitioners’ motion even though it determined no law required or even authorized it to do so. (Ruling on Motion at 1–3). Neither party claims PERB erred by addressing the Motion for Reconsideration.

proceedings. IOWA CODE § 17A.19(10) (2011). The Court “shall reverse, modify, or grant other appropriate relief from agency action, equitable or legal and including declaratory relief, if it determines that substantial rights of the person seeking judicial relief have been prejudiced” for any of the grounds listed under the statute. *Id.*

The Petitioners raise several standards of review in their brief. PERB suggests additional standards in its brief, which the Petitioners apparently accept in their reply brief.

The Petitioners argue PERB’s interpretation of law is “[b]eyond the authority delegated to the agency by any provision of law.” IOWA CODE § 17A.19(10)(b). Relatedly, the Petitioners also argue PERB erred in its interpretation of law. *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 219 (Iowa 2006) (citations omitted). The level of deference given to an agency’s statutory interpretation depends on whether the legislature has vested in the agency the authority to interpret the statute. *Renda v. Iowa Civil Rights Comm’n*, 784 N.W.2d 8, 10 (Iowa 2010). An agency possesses interpretive authority only when the legislature clearly vests such authority in the agency. *Neal v. Annett Holdings, Inc.*, 814 N.W.2d 512, 518–19 (Iowa 2012).

Iowa courts have previously found PERB does not possess the authority to interpret the code sections at issue here. *See Waterloo Educ. Ass’n v. PERB*, 740 N.W.2d 418, 420 (Iowa 2007). However, in 2010 the legislature granted PERB the authority to “[i]nterpret, apply, and administer the provisions of” Iowa Code chapter 20. 2010 Iowa Acts ch. 1165, § 6 (codified at IOWA CODE § 20.6(1)). This language shows a clear legislative intent to vest in PERB the authority to interpret the code sections at issue here. *See Renda*, 784 N.W.2d at 10. As such, the Court must give deference to PERB’s interpretation. *See id.* The Court must reverse, modify or grant other appropriate relief from the challenged action if it was “[b]ased upon an irrational, illogical, or wholly unjustifiable interpretation of a provision of law whose interpretation has

clearly been vested by a provision of law in the discretion of the agency.” IOWA CODE § 17A.19(10)(l). A decision is “irrational” when it is not governed by or according to reason. *Sherwin-Williams Co. v. Iowa Dep’t of Revenue*, 789 N.W.2d 417, 432 (Iowa 2010). A decision is “illogical” when it is contrary to, or devoid of, logic. *Id.* A decision is “unjustifiable” when it has no foundation in fact or reason. *Id.*

Next, the Petitioners argue PERB’s decision is “[t]he product of reasoning that is so illogical as to render it wholly irrational.” IOWA CODE § 17A.19(10)(i). A decision is “irrational” when it is not governed by or according to reason. *Sherwin-Williams Co.*, 789 N.W.2d at 432.

Finally, the Petitioners argue PERB’s decision is “unreasonable, arbitrary, capricious, or an abuse of discretion.” IOWA CODE § 17A.19(10)(n). An agency’s action is “arbitrary” or “capricious” when the agency acts “without regard to the law or facts of the case.” *Dico, Inc. v. Iowa Employment Appeal Bd.*, 576 N.W.2d 352, 355 (Iowa 1998) (citation omitted). “An agency action is ‘unreasonable’ when it is ‘clearly against reason and evidence.’” *Soo Line R.R. v. Iowa Dep’t of Transp.*, 521 N.W.2d 685, 688–89 (Iowa 1994) (quoting *Frank v. Iowa Dep’t of Transp.*, 386 N.W.2d 86, 87 (Iowa 1986)). “An abuse of discretion occurs when the agency action ‘rests on grounds or reasons clearly untenable or unreasonable.’” *Dico*, 576 N.W.2d at 355 (quoting *Schoenfeld v. FDL Foods, Inc.*, 560 N.W.2d 595, 598 (Iowa 1997)).²

² The Petitioners also argue PERB “did not consider a relevant and important matter relating to the propriety or desirability of the action in question that a rational decision maker in similar circumstances would have considered prior to taking that action.” IOWA CODE § 17A.19(10)(j). However, the Petitioners never specify what “relevant and important matter” PERB failed to consider. *See id.* Therefore this Court will not address this argument.

ANALYSIS

A. *Negotiability Test*

Iowa law requires public employers to negotiate in good faith with the relevant unions over certain enumerated subjects. IOWA CODE § 20.9. The Iowa Supreme Court has devised a two-prong test to determine whether the parties must negotiate in good faith over a subject. *Waterloo Educ. Ass'n v. PERB*, 740 N.W.2d 418, 429 (Iowa 2007). The first prong requires a determination of “whether a proposal fits within the scope of a specific term” listed in Iowa Code section 20.9. *Id.* These terms receive their “common and ordinary meaning within the structural parameters” of section 20.9. *Id.* at 429–30. The second prong requires a determination of “whether the proposal is preempted or inconsistent with any provision of law.” *Id.* at 429. Under this test, the adjudicating body must consider “the predominant purpose of the proposal and . . . what the employer would be bound to do if the proposal was adopted.” *Id.* at 427 (citing *State v. PERB*, 508 N.W.2d 668, 673 (Iowa 1993)).

The Petitioners generally agree PERB must use the negotiability test. However, the Petitioners argue PERB committed two errors in using the negotiability test.

First, PERB found the predominant purpose of the ESIP is the reduction of the number of tenured faculty. The Petitioners argue PERB must evaluate a proposal on its face, and nothing authorizes PERB to determine an employer’s motives. However, the Iowa Supreme Court has explicitly instructed PERB to consider “the predominant purpose of the proposal.” *Id.* Considering this clear judicial directive, PERB’s decision to determine the Petitioners’ predominant purpose behind the proposal is not “[b]eyond the authority delegated to the agency,” or “an irrational, illogical, or wholly unjustifiable interpretation of a provision of law.” IOWA CODE § 17A.19(10)(b), (l). Also, considering the Regents stated the ESIP is “a tool to

shape, redirect, and focus the faculty work force,” PERB’s decision that the predominant purpose of the ESIP is the reduction of faculty is not “illogical,” “unreasonable, arbitrary, capricious, or an abuse of discretion.” *Id.* § 17A.19(10)(i), (n).

Second, PERB did not consider traditional management rights as part of the negotiability test. The Petitioners argue PERB must consider statutory management rights under the negotiability test. *See id.* § 20.7. The Petitioners correctly note the Iowa Supreme Court has rejected an infringement test, which considers whether a proposal infringes on management rights. *See Waterloo Educ. Ass’n*, 740 N.W.2d at 429. However, the Petitioners maintain the negotiability test requires PERB to define the mandatory subjects within the parameters of traditional management rights. This argument contradicts the Iowa Supreme Court’s clear instructions for the negotiability test. The negotiability test requires PERB to give terms their “common and ordinary meaning within the structural parameters” of section 20.9. *See id.* at 429–30. PERB may consider management rights “[o]nly in unusual cases where the predominant topic of a proposal cannot be determined.” *See id.* at 429. Otherwise, the negotiability test does not reference traditional management rights, and the Iowa Supreme Court has clearly rejected any such balancing. *See id.* (“[T]he legislature has already done the balancing. There is no occasion for this court to judicially rebalance what the legislature has already balanced.”). Given these judicial directions, PERB’s lack of consideration of management rights under the negotiability test is not “[b]eyond the authority delegated to the agency,” or “an irrational, illogical, or wholly unjustifiable interpretation of a provision of law.” IOWA CODE § 17A.19(10)(b), (l). Also, considering PERB determined the predominant topic of the ESIP, PERB’s use of the negotiability test for the ESIP without consideration of management

rights is not “illogical,” “unreasonable, arbitrary, capricious, or an abuse of discretion.” *Id.* § 17A.19(10)(i), (n).

B. First Prong: Topics

Under the first prong of the negotiability test, PERB must determine “whether a proposal fits within the scope of a specific term” listed in Iowa Code section 20.9. *Waterloo Educ. Ass’n*, 740 N.W.2d at 429. These enumerated terms are known as mandatory subjects. *Id.* Mandatory subjects include “wages,” “supplemental pay,” “leaves of absence,” “insurance,” and “procedures for staff reduction.” IOWA CODE § 20.9. A proposal that does not fit into one of the mandatory subjects is a permissive subject. *Waterloo Educ. Ass’n*, 740 N.W.2d at 421–22. If the parties cannot reach agreement on a mandatory subject, the parties must follow statutory procedures to resolve the issue. *Id.* (citing *City of Fort Dodge v. PERB*, 275 N.W.2d 393, 395 (Iowa 1979)). The parties may choose to bargain over permissive subjects, or the public employer may unilaterally decide the issue. *Id.*

The number of mandatory subjects is finite, and the statutory terms are “not merely descriptive or suggestive.” *Id.* at 425. The “terms cannot be interpreted in a fashion so expansive that the other specifically identified subjects of mandatory bargaining become redundant.” *Id.* at 430. However, the terms are not “subject to the narrowest possible interpretation” and receive their “common and ordinary meaning within the structural parameters” of section 20.9. *Id.* at 429–30.

1. Procedures for Staff Reduction

PERB determined the ESIP is a voluntary staff reduction, and classified the ESIP as “procedures for staff reduction.” IOWA CODE § 20.9. The Petitioners argue PERB erred in its interpretation of “procedures for staff reduction” by classifying the ESIP as such. *Id.*

The goal of statutory interpretation is to “determine legislative intent from the words chosen by the legislature.” *See Auen v. Alcoholic Beverages Div.*, 679 N.W.2d 586, 590 (Iowa 2004) (citations omitted). According to the Petitioners, the legislature intended “procedures for staff reduction” to include only involuntary staff reductions, such as layoffs, and PERB cannot expand this definition to include voluntary staff reductions like the ESIP.³ The Petitioners correctly note the number of mandatory subjects is finite, and “procedures for staff reduction” must have a limited definition. *See Waterloo Educ. Ass’n*, 740 N.W.2d at 429–30. However, “procedures for staff reduction” receives its “common and ordinary meaning within the structural parameters” of section 20.9. *See id.* Nothing within the term “procedures for staff reduction” or in the parameters of section 20.9 addresses the voluntariness of the reduction. The legislature could have simply added “involuntary” or a similar word if it intended for the term to apply only to involuntary staff reductions. Because the legislature did not use any such limiting words, PERB’s decision to classify a voluntary staff reduction as “procedures for staff reduction” is not “[b]eyond the authority delegated to the agency,” or “an irrational, illogical, or wholly unjustifiable interpretation of a provision of law.” IOWA CODE § 17A.19(10)(b), (l).

The Petitioners argue voluntary staff reductions differ considerably from involuntary staff reductions due to a lack of employer control. When an employer demands involuntary staff reductions, the employer controls everything about the process. The Petitioners argue the

³ Iowa’s appellate courts have not decided whether “procedures for staff reduction” includes a voluntary staff reduction. The Iowa Supreme Court previously found an early retirement proposal is not “wages” or “supplemental pay,” but the Court explicitly declined to address whether such a proposal qualifies as “procedures for staff reduction.” *See Fort Dodge Cmty. Sch. Dist. v. PERB*, 319 N.W.2d 181 (Iowa 1982). The Petitioners note previous PERB decisions have applied “procedures for staff reduction” only to involuntary staff reductions. *See In re Bettendorf Cmty. Sch. Dist.*, Nos. 598 & 602, at 16–17 (Iowa PERB Feb. 3, 1976); *In re Woodward–Granger Cmty. Sch. Dist.*, No. 1016, at 6–9 (Iowa PERB June 6, 1977). However, nothing in these earlier PERB decisions defines “procedures for staff reduction” as excluding voluntary staff reductions. *See id.* Furthermore, to the extent these earlier agency decisions purport to limit the definition of “procedures for staff reduction,” statutes and appellate court decisions provide controlling legal standards and not prior agency decisions. *See Finch v. Schneider Specialized Carriers, Inc.*, 700 N.W.2d 328, 332 (Iowa 2005).

employer surrenders much of this control when offering a voluntary staff reduction. The employer has no control over which or how many employees volunteer for a staff reduction. Due to this lack of control, the Petitioners argue a voluntary staff reduction could result in no volunteers and no reduction in staff. However, as explained above, the term “procedures for staff reduction” contains no indication the legislature intended to exclude voluntary staff reductions from the term. Therefore, despite the differences in employer control between voluntary and involuntary staff reductions, PERB’s classification of a voluntary staff reduction as “procedures for staff reduction” is not “illogical,” “unreasonable, arbitrary, capricious, or an abuse of discretion.” *Id.* § 17A.19(10)(i), (n).

2. Wages, Supplemental Pay, Leaves of Absence, and Insurance

The Petitioners argue a voluntary staff reduction such as the ESIP does not qualify as “wages,” “supplemental pay,” “leaves of absence,” or “insurance.” *See id.* § 20.9. PERB explicitly found the ESIP does not qualify as “wages” or “insurance.” PERB did not explicitly address whether the ESIP qualifies as “supplemental pay” or “leaves of absence.” However, PERB found the ESIP qualifies as “procedures for staff reduction,” and a proposal cannot fall under multiple mandatory subjects. To the extent the Petitioners argue a voluntary staff reduction is not “supplemental pay” or “leaves of absence,” this Court has no original authority to do so. *See Office of Consumer Advocate*, 432 N.W.2d at 156. To the extent the Petitioners argue a voluntary staff reduction cannot meet the definition of any mandatory subject other than “procedures for staff reduction,” PERB agrees and the Petitioners do not raise an error for this Court to review. *See IOWA CODE* § 17A.19(1) (allowing judicial review for a party “who is aggrieved or adversely affected by any final agency action”).

C. *Second Prong: Illegality*

The second prong requires a determination of “whether the proposal is preempted or inconsistent with any provision of law.” *Waterloo Educ. Ass’n*, 740 N.W.2d at 429. Iowa law prohibits negotiations over “retirement systems.” IOWA CODE § 20.9. The legislative intent of this language is to prohibit negotiation over “any proposal that directly augments or supplements the benefits a public employee would receive under a retirement system under other provisions of the Code.” *City of Mason City v. PERB*, 316 N.W.2d 851, 854 (Iowa 1982). PERB concluded the ESIP is a one-time severance payment, which is not a “proposal that directly augments or supplements” retirement benefits. *See id.* The Petitioners argue PERB erred in reaching this decision.

PERB relies on judicial precedent in finding a one-time severance payment is not an illegal subject. *See Prof'l Staff Ass'n of Area Educ. Agency 12 v. PERB*, 373 N.W.2d 516, 519 (Iowa Ct. App. 1985). In *Professional Staff Association*, the Court of Appeals affirmed PERB’s decision that a one-time severance payment was not an illegal subject. *See id.* at 517. However, the court in *Professional Staff Association* focused on the proposal’s classification under the first prong of the negotiability test, and never directly addressed the legality of the proposal. *See id.* at 517–19. Furthermore, the Iowa Supreme Court has since modified the standards for the negotiability test. *See Waterloo Educ. Ass’n*, 740 N.W.2d at 425–29. Therefore, the precedential value of *Professional Staff Association* for the issue of illegality is questionable.

Nevertheless, the legislature has vested PERB with authority to interpret section 20.9. *See IOWA CODE § 20.6(1)*. PERB found a severance benefit is equally available to all participating employees upon separation—regardless of whether the employee retired or merely resigned—while a retirement benefit is only available to retiring employees. PERB also found a

one-time payment provides a single benefit like a final paycheck or other severance payment, while a retirement benefit provides ongoing benefits. Considering these differences between one-time severance benefits and traditional retirement benefits as well as PERB's interpretive authority, PERB's decision that a one-time severance payment is not part of a retirement system is not "[b]eyond the authority delegated to the agency," or "an irrational, illogical, or wholly unjustifiable interpretation of a provision of law." *Id.* § 17A.19(10)(b), (l).

The Petitioners emphasize a severance payment can provide benefits to retiring employees. The Petitioners note the Iowa Supreme Court has previously found a proposal for an employer to pay retirees' insurance premiums is part of a retirement system. *See city of Mason City*, 316 N.W.2d 851. However, as explained above, the one-time nature of the ESIP benefits differ from ongoing retirement benefits. Considering the ESIP's one-time nature, PERB's decision that the ESIP is not part of a retirement system is not "illogical," "unreasonable, arbitrary, capricious, or an abuse of discretion." IOWA CODE § 17A.19(10)(i), (n).

ORDER

IT IS THEREFORE THE ORDER OF THIS COURT that the Declaratory Order and the Ruling on Motion of the Iowa Public Employment Relations Board are hereby AFFIRMED.

IT IS FURTHER ORDERED that the court costs are taxed to the Petitioners.

Dated this 29th day of September 2013.

Scott D. Rosenberg, Judge
Fifth Judicial District of Iowa



State of Iowa Courts

Type: OTHER ORDER

Case Number CVCV009268
Case Title BOARD OF REGENTS, STATE OF IA ET AL VS IOWA PUBLIC EMPLOYMEN

So Ordered

A handwritten signature in cursive script that reads "Scott D. Rosenberg".

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