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IN THE IOWA DISTRICT COURT FOR POLK COUNTY

UNITED ELECTRICAL, RADIO, & MACHINE WORKERS OF AMERICA, **Petitioner,** **vs.** **IOWA PUBLIC EMPLOMENT RELATIONS BOARD,** **Respondent,** **and** **STATE OF IOWA and BOARD OF REGENTS,** **Intervenors.**	**Case No. CVCV 054946** **RULING ON PETITION FOR JUDICIAL REVIEW**

This case was before the court for oral argument and final submission on January 26, 2018. Attorneys Charles Gribble and Christopher Stewart represented the Petitioner (the "UE"). Attorney Diane S. Machir represented the Respondent ("PERB"). Assistant Iowa Attorney General Molly M. Weber represented the Intervenors (the "State"). Having considered the administrative record and the parties' written and oral arguments, the court makes the following ruling on UE's petition for judicial review.

Nature of the Case

UE challenges: (1) PERB's declaratory ruling that three hypothetical collective bargaining proposals it submitted were in whole or part permissive subjects of bargaining under Iowa Code Chapter 20; and (2) PERB's ruling that an Iowa Code section 20.22

arbitrator has the authority to consider a current, existing collective bargaining agreement (CBA) when arbitrating a base wage impasse.

Factual and Procedural Background

The UE is an "employee organization" within the meaning of Iowa Code Chapter 20, the Public Employment Relations Act ("PERA").

PERB's rules permit it to issue declaratory rulings. It does so as a matter of law based solely on the language of the question and the hypothetical facts posed, without the presentation of evidence. On April 21, 2017 the UE filed a petition with PERB seeking a declaratory ruling on whether four hypothetical bargaining proposals were mandatory subjects of bargaining under PERA. The petition also sought a ruling on whether, under PERA, an arbitrator was allowed to consider a "past" CBA in arbitrating a wage impasse. The State filed an application to intervene in the UE's declaratory ruling action, which PERB allowed. On June 29, 2017 PERB issued its ruling declaring that three of the UE's four hypothetical bargaining proposals were entirely or partially permissive. PERB declined to issue a ruling on one of the four proposals because the hypothetical facts submitted were insufficient. Finally, PERB ruled that an arbitrator under Chapter 20 could consider an existing collective bargaining agreement ("CBA") when arbitrating a wage impasse because an existing CBA is not a "past" CBA.

On September 19, 2017 the UE filed the instant petition for judicial review challenging PERB's declaratory ruling. The UE does not challenge PERB's refusal to rule on one of the hypothetical bargaining proposals it submitted.

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Standard of Review

The standards for district court review of agency action are well established. The court acts in an appellate capacity to correct the agency's errors. *Holland Bros. Constr. Co. Inc. v. Iowa State Bd. of Tax Review*, 611 N.W.2d 495, 499 (Iowa 2000). The grounds upon which a court may interfere with an agency decision are set forth in Iowa Code §17A.19(10)(a-n) and include situations where the decision of the agency is based on an erroneous interpretation of law, is not supported by substantial evidence in the record as a whole or is "an irrational, illogical or wholly unjustifiable application of law to fact."

The parties agree that this case represents a challenge to the agency's interpretation of the law. Where it is alleged that an agency's action is based on an erroneous interpretation of law, the court gives the agency's determination of the law deference only if interpretation of the law has "clearly been vested by a provision of law in the discretion of the agency." Iowa Code § 17A.19(10)(l). In such cases the court interferes with the agency's interpretation only if it is found to be "irrational, illogical or wholly unjustifiable." *Id.* Where the law does not vest interpretation of the law in the agency's discretion, the court reviews the agency's interpretation for errors of law, without deference. Iowa Code § 17A.19(10)(c). Here, the parties agree that

Discussion and Analysis

1. Negotiability of bargaining proposals.

The 2016 Iowa legislature amended Chapter 20 to distinguish between the bargaining rights of employee organizations composed of at least thirty percent "public

safety employees" and those that are not. There is no dispute that the UE falls into the latter category. Section 20.9 affords such organizations the following bargaining rights:

> For negotiations regarding a bargaining unit that does not have at least thirty percent of members who are public safety employees, 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 base wages and other matters mutually agreed upon. Such obligation to negotiate in good faith does not compel either party to agree to a proposal or make a concession. Mandatory subjects of negotiation specified in this subsection shall be interpreted narrowly and restrictively.

Thus, the only subject matter that the State is required to bargain about with the UE represented employees is "base wages".

Summaries of the three UE bargaining proposals which PERB declared to be partially or entirely outside the scope of "base wages" and therefore not mandatory subjects of bargaining are as follows (presented in the order set forth in the UE's petition and amended petition for judicial review):

1. Pay of $50,000.00 for each employee:

A. per year;
B. paid in bi-monthly payments on the 1st and 15th of each month;
C. for working 8 hours a day, 40 hours per week;
D. with nine (9) holidays;
E. three (3) weeks' paid vacation;
F. ten (10) days paid sick leave; and
G. time-and-a-half pay for hours worked over 40 hours in a single week.

2. An annual base wage of $55,000.00 with a one-hour lunch break and two fifteen minute breaks for employees whose work shift is from11:00 p.m. to 7:00 a.m.

3. Increased pay based on years of service.

There is no dispute that the only difference between the employees mentioned in proposals 1 and 2 is that the employees mentioned in proposal 2 work a "night shift." In

its ruling, PERB declared that all of these proposals except items 1A and 1B concern subject matters other than “base wages.”

In reaching its conclusion PERB employed the two-part analysis described in *Waterloo Educ. Ass'n v. Iowa Pub. Employment Relations Bd.*, 740 N.W.2d 418, 429 (Iowa 2007) (“*Waterloo II*”) for determining whether a proposal is a mandatory subject of negotiation under PERA. This was not erroneous since there is no reason to believe the Iowa Supreme Court will adopt some different basis of negotiability analysis applicable to section 20.9 of PERA just because the legislature changed the definition of negotiable subject matters.

Before engaging in the first, definitional prong of the *Waterloo II* analysis, PERB correctly observed the new legislative mandate of section 20.9 that “[m]andatory subjects of negotiation specified in this subsection shall be interpreted narrowly and restrictively.” PERB then turned to defining “base wages” by first noting the broad definition of “wages” under existing PERA jurisprudence. See e.g. *Charles City Education Ass’n. v. PERB,* 291 N.W.2d 663, 668 (Iowa 1980). PERB, clearly correctly, noted that the term “base wages” cannot be interpreted to have the same meaning as the term “wages”. The term “base wages”, on its face, is some narrower subset of the universe of what constitutes “wages”. Because the word “base” has no special meaning in the statute or in case law, PERB gave the word its ordinary dictionary meaning. This analysis resulted in PERB defining “base wages” as “the minimum (bottom) pay for a job classification, category or title, exclusive of additional pay such as bonuses, premium pay, merit pay, performance pay or longevity pay.”

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There is no error in PERB's analysis. There is also no error in PERB's application of what it concluded is the definition of "base wages" to the UE's proposals. All but the first two items of proposal 1 involve either non-wage matters or a category of "wages" that is beyond "base wages", such as higher pay for longevity and working a night shift. As PERB correctly noted, if the UE's argument were accepted, the terms "base wage" and "wage" would have co-extensive meaning. This would be contrary to both the plain meaning of the words used and the statutory mandate that the term be interpreted "narrowly and restrictively."

The court acknowledges, as did PERB, that the changes to chapter 20 applicable to non-public safety employees have drastically curtailed the pre-existing collective bargaining rights for such employees. As the UE points out, its bargaining rights have been so limited that it can only force bargaining for the relatively few new employees coming in at a "base wage." Whether this is good or bad policy, or whether it is even what the legislature really intended, is not a proper subject matter for the court or PERB. The court (and PERB) are bound to enforce the literal meaning of the words of legislative enactments. Here, PERB made no error in doing so.

2. Authority of arbitrator.

In its petition for declaratory ruling, the UE asked PERB whether it was appropriate for an arbitrator resolving a bargaining impasse over base wages to consider the wages being paid the employees under the existing but expiring CBA. PERB answered that question in the affirmative. The UE argues this result is erroneous.

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In resolving this issue PERB examined two seemingly conflicting provisions of chapter 20, sections 20.22 (8)(a)(1) and (8)(b)(1) which, respectively, provide as follows:

> a. The arbitrator *shall* consider …:
>
> (1) Comparison of base wages, hours, and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved. To the extent adequate, applicable data is available, the arbitrator shall also compare base wages, hours, and conditions of employment of the involved public employees with those of private sector employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved.
>
> b. The arbitrator *shall not* consider the following factors:
>
> (1) Past collective bargaining agreements between the parties or bargaining that led to such agreements.

(emphasis by court)

The UE argues that the current, expiring CBA is a "past" CBA which an arbitrator is prohibited from considering under section b. (1). PERB rejected this interpretation of the two provisions, concluding that the current CBA is not a "past" CBA. As PERB pointed out, this is the only reasonable interpretation of the two sections because section a. (1) unequivocally *requires* the arbitrator to consider the "involved" employees' existing base wages. The court agrees with PERB's reasoning that under rules of statutory construction, two arguably conflicting provisions must be harmonized if possible. Here, PERB's conclusion that the current CBA is not a "past" CBA is reasonable and does no harm to the apparent intent of the provisions.

Ruling

For all of the reasons set forth above, the court affirms the decision of PERB and therefore denies and dismisses the UE's petition for judicial review at the UE's cost.

State of Iowa Courts

Type: OTHER ORDER

Case Number	**Case Title**
CVCV054946	UE LOCAL 893 IUP VS IOWA PERB

So Ordered

Douglas F. Staskal, District Court Judge,
Fifth Judicial District of iowa