IN THE IOWA DISTRICT COURT FOR POLK COUNTY

OSKALOOSA EDUCATION ASSOCIATION, Petitioner, v. IOWA PUBLIC EMPLOYMENT RELATIONS BORAD, Respondent, OSKALOOSA COMMUNITY SCHOOL DISTRICT, Intervenor.	CASE NO. CVCV054286 **ORDER RE: PETITION FOR JUDICIAL REVIEW**

The court has before it a petition for judicial review filed by the Oskaloosa Education Association ('Association") on June 14, 2017 concerning a decision issued by the Iowa Public Employment Relations Board ("PERB") on May 17, 2017. The Oskaloosa Community School District ("District") was allowed to intervene on the side of PERB by an order from this court on August 15, 2017. A hearing was held on October 13, 2017. The parties were represented by their counsel. A second telephonic hearing was held on January 23, 2018 with the parties' counsel. The court having reviewed the administrative record, the court file, the written submissions of the parties and having heard arguments of counsel finds and orders as follows.

The Association seeks judicial review of PERB's decision regarding the negotiability of certain paragraphs in Article XVII: Salaries and Salary Schedules ("Salary Schedule") of the Association's proposal submitted to the District. When presented with the Salary Schedule the District filed a petition for expedited resolution of negotiability dispute with PERB on May 31,

2017.[1] The District's petition was prompted by the legislature's amendment to Iowa Code section 20.9 which radically changed the law of public employment bargaining for non-public safety bargaining units by eliminating all mandatory subjects of bargaining except for "base wages."[2] The legislature failed to define the phrase "base wages" in the amendments and as a result the District sought a ruling determining which portions of the Association's Salary Schedule were mandatory and/or permissive subjects of negotiation. In ruling on the petition PERB determined that the only portion of the Salary Schedule that was a mandatory subject of bargaining or in other words constituted "base wages" were salaries listed in the first row of cells under the various educational attainment lanes. The base wages would be those identified in the first row of cells labeled Step 1in the Salary Schedule for the positions of teachers, nurses and other supplemental positions.[3] PERB's decision further stated that the Step 1 salary was only mandatory if the District chose to use the educational levels as job classifications.[4]

When the court is presented with a petition for judicial review the court acts as an appellate court. The standard of review that the district court is required to employ is dependent

[1] Case No. CVCV054286, Cert. Rec., Petition (Attachment 1) (Polk Cty Dist. Ct. July 14, 2017) (hereinafter referred to as "Cert. Rec."). PERB filed a portion of the agency record with the court on July 14, 2017. That certified record included six (6) attachments. Five (5) of the attachments were electronically filed and the sixth was filed with the clerk non-electronically which consisted of the audio-recording of the hearing before PERB. The court will refer the filings as the Certified Record ("Cert. Rec.") and the name and/or the attachment number given to each document filed.

[2] 2017 Acts, ch. 2, §§ 6, 26, 27 (Feb. 17, 2017)

[3] *See* Appendix A-1 to A-3. *See also* Cert. Rec. Petition, Attachment 1 at ¶8 (This paragraph sets forth the language from the Association's proposal that was before PERB. The underlined language in the proposal was argued by the District to be permissive subjects of negotiation.)

[4] App. A-1 indicates a series of columns which PERB referred to as "job classifications" in its decision. These refer to, for example on page A-1 with the headings BA, BA+15, BA+30, etc. These headings PERB referred to as "job classifications." *See* PERB Decision at 7. The parties also referred to these headings as educational attainment lanes. The same would be true for the nursing positions found at the bottom of A-1.

upon the agency's decision that forms the basis for the petition for judicial review.[5] Here the parties agree that the error claimed by the Association was PERB's interpretation of the law. The Association asserts that PERB's interpretation was erroneous. The parties also agree that PERB has not clearly been vested with interpretive authority. [6] Consequently, the district court is not to give any deference to PERB's interpretation and the district court reviews for corrections of errors of law.[7]

> When PERB is presented with a question of negotiability
>
> PERB looks only at its subject matter and not its merits. *Charles City Cmty. Sch. Dist. v. PERB,* 275 N.W.2d 766, 769 (Iowa 1979). It is not for PERB to rewrite the proposals at issue. Consequently, the Board takes caution to read proposals literally. *Clinton Police Dep't Bargaining Unit v. PERB,* 397 N.W.2d 764, 766 (Iowa 1986). PERB must decide whether a proposal, on its face, fits within a definitionally fixed section 20.9 mandatory bargaining subject. *Waterloo E,* 740 N.W.2d at 429. In order to make that determination, PERB cannot merely search for a topical word listed in section 20.9. *State v. PERB,* 508 N.W.2d 668, 675 (Iowa 1993). Rather, PERB must look to what the proposal, if incorporated through arbitration into the collective bargaining agreement, would bind an employer to do. *State,* 508 N.W.2d at 673; *Charles City Cmty. Sch Dist.,* 275 N.W.2d at 774. The answer to this inquiry reveals the subject, scope, or predominant characteristic or purpose of the proposal. *Waterloo II,* 740 N.W.2d at 427; *State,* 508 N.W.2d at 673. If the proposal's predominant characteristic, subject or scope is not within a mandatorily negotiable section 20.9 category, and the proposal is not excluded from the scope of bargaining, it is a permissive subject upon which the parties may agree to negotiate.[8]

With these standards in mind the court will review the agency decision to determine if PERB correctly interpreted section 20.9 in finding 1) the Step 1 salaries were mandatory subjects of bargaining because they were base wages; 2) the "job classifications" were permissive subjects

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[5] *Burton v. Hilltop Care Ctr..,* 813 N.W.2d 250, 256 (Iowa 2012)
[6] The parties agreed with that this standard of review governed the court's consideration in the telephonic conference on January 23, 2018.
[7] *Westling v. Hormel,* 810 N.W.2d 247, 251 (Iowa 2012)
[8] *In the Matter of: Columbus Comm. School District and Columbus Education Association*, 17 PERB 100820, 2017 WL 2212060, at *1 (Public Employment Relations Board May 17, 2017)

of negotiation unless the District adopted the educational attainment lanes as job classifications; and 3) the vertical steps were permissive subjects of negotiation.[9]

Since the legislature did not define "base wages" PERB previously defined that phrase to mean "the minimum (bottom) pay for a job classification, category or title, exclusive of additional pay such as bonuses, premium pay, merit pay, performance or longevity pay."[10] PERB utilized that same definition here. In addition, PERB relied on its finding in *Columbus* that job classifications unless adopted as such by the employer were permissive subjects of bargaining.[11]

In *Columbus* PERB set forth its analysis in reaching its definition of "base wages." That analysis involved a comparison of the term "wages" as maintained in section 20.9 for public safety bargaining units and historical precedent and "base wages"[12] along with the legislature's instruction that "[m]andatory subjects of negotiation specified in this subsection shall be interpreted narrowly and restrictively."[13]

Here the Association submitted a proposal that was different from the proposal in *Columbus.* In *Columbus* the salary schedule utilized a formula which yielded a single base wage for each classification, regardless of the employee's longevity or educational level.[14] In this case the Association established a matrix that provides for educational attainment lanes for teachers and nurses based upon the type of college degree obtained along with classifications that considered the time between the original bachelor's degree and the attainment of a master's degree and college credits earned after attainment of a master's degree. A portion of the proposal

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[9] While PERB's decision also addressed the longevity pay and the teacher supplemental pay those issues were not presented for review to this court.
[10] *Columbus,* 2017 WL 2212060 at *3.
[11] *Id.* at 2017 WL 2212060 at *5.
[12] *In the Matter of: Columbus Comm. School District and Columbus Education Association,* 17 PERB 100820, 2017 WL 2212060, at *2-3.
[13] 2017 Acts, Ch 2, § 6.
[14] *Id.* at *7, Exhibit 1.

crated a matrix which identified supplemental extracurricular positions by title (for example varsity football coach).[15] The educational attainment lanes were on the horizontal axis as were the titles for the extracurricular positions. Under each educational attainment lane and title there were additional "steps" which provided for increases in salary as the teacher gained more experience. Finally, the proposal provided for the payment of longevity pay.[16]

The steps along the Salary Schedule vertically set forth in the written proposal can be found in Article XVII: Salaries and Salary Schedules paragraph E which was labeled increments. It provided for the advancement of the teachers and nurses for every year of service they provided. Paragraphs C and D applied to teachers who may have taught in other districts or teachers who previously taught in the District, left and came back. Paragraph F(2) demonstrated how teachers or nurses who moved from one educational lane to a higher lane would move vertically in the new educational lane.[17] Paragraph G concerned the longevity pay that is no longer an issue in this petition.

Essentially, the Association's position is that each step demonstrates the experience a teacher or nurse has with the District. Utilizing PERB's definition of base wages, the Association asserts, for example, that a teacher with a BA who presently is paid as a teacher in step 8 has more experience than a teacher with a BA at Step 2. Because the teacher with a BA at step 8 has more experience than a teacher at BA step 2 the base wages for the former would be higher than

[15] App. A-3
[16] The Association did not seek judicial review of PERB's decision concerning longevity pay. A similar matrix was created for teachers and teachers involved in extracurricular duties such as coaching, orchestra, and band.
[17] District did not seek a determination whether paragraph F(1) was considered a mandatory subject of negotiation.

the latter.[18] The same is true as the employee moves between the educational lanes. A teacher with a MA even if teaching in her first year with the master's degree would have higher base wages than a teacher at BA step 1. The former's base wages would be higher than the latter. In other words what would be the minimum, lowest (bottom) starting point for pay for services rendered by the bargaining unit members at each educational lane attainment and step. What amount of base wages would a teacher with a BA at step 8 be willing to work. That base wage would be higher than a teacher with a BA at step 2.

PERB argued that the use of the word "experience" was really "a fanciful way of saying longevity."[19] This argument was echoed by the District. [20] In making this statement PERB cited to its decision in *Eastern Iowa Cmty. College,*[21] where they stated:

> Teacher compensation has for many years in Iowa been determined on the basis of a salary schedule, a matrix of salary amounts stated in dollars per annum. With the number in the upper left hand corner as the "base" salary for a starting teacher, the matrix provides progressive salary increases for movement down the schedule, classified by years of service, and across the schedule, classified by level of educational attainment. ***Longevity steps are commonly referred to as vertical increment***; the educational lanes are horizontal increments. Each individual can then locate his or her ***longevity*** and education. It is worth noting that in most instances a teacher's placement on the salary schedule is not related to the individual teaching position, such as the grade level taught, the subject area, etc. Typically, the schedule applies to all faculty members and in many instances to other professional employees[22]

PERB determined that a wage increase on the basis of an employee's additional years of service does not fall within the narrower mandatory subject of "base wages." In other words

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[18] Associations' Br. at 15 ("The salary schedules are based upon experience (steps on the vertical axis). . . .")
[19] PERB's Br. at 15.
[20] District's Br. at 11-12.
[21] *Eastern Iowa Cmty. Coll.-Merged Area IX and Eastern Iowa Cmty. Coll. Higher Educ. Org.,* 78 PERB 1168 (Ruling on Negotiability Dispute Feb. 1, 1978)
[22] *Id.* at 1 (emphasis added).

movement vertically in the various educational lands or titles does not meet the narrower definition of "base wages" in the present proposal. The court does not find erroneous PERB's conclusion that movement vertically between steps is a permissive subject of bargaining. The court finds no error in PERB's decision that the vertical movement foes not fit into the narrower mandatory subject of "base wages."

The Association objected to PERB's restriction of base wages to a "job classification, category or title."[23] The Association asserted that to do so was without any support in the law but failed to cite any authority for this proposition.

Previously PERB addressed the phrase "job classifications" when it was a mandatory subject of bargaining. In *Bettendorf Comm. School Dist. v. Bettendorf Educ. Ass'n. and Dubuque Comm. School Dist. v. Dubuque Educ. Ass'n.*[24] PERB stated:

> ***Thus, the term "job classification" relates to the arrangement of jobs into categories, based on selected factors, for the primary purpose of establishing wage or salary rates.*** It does not relate to the assignment of employees, notification of those assignments, or the qualifications for employment (although those qualifications, i.e. "training, experience, or skill," may be the basis for the categorical arrangement of jobs). Nor does it include job content (the functions, requirements, and duties of a given job) or job description (a written record summarizing the main features or characteristics of a job, including description of duties, responsibilities, promotional opportunities, general working conditions, qualifications, materials handled, etc.).[25]

In reaching this conclusion PERB relied on the definition of job classification from Roberts' Dictionary of Industrial Relations[26] which defined the phrase as follows.

> A method of arranging jobs into various categories or classes in a particular company or industry. The arrangement may be based on requirements such as training, experience, or skill. The grouping is designed to bring together occupations with characteristics sufficiently clear to distinguish them from

[23] Ass'n Br. at 14
[24] PERB Case No. 598 and 602 (Decision and Order Feb. 3, 1976)
[25] *Id.* at 9 (emphasis added).
[26] Roberts, Roberts' Dictionary of Industrial Relations, (rev. ed. 1971).

> those in other classes. The wage compensation usually parallels the requirements of the job and is based on progressively higher skills, experience, training, or other factors required in the job. When related jobs are placed into classes, they may be assigned to labor grade groups with specific single rates or rate ranges which have a minimum and maximum for each labor grade.[27]

It is clear from PERB's conclusions in *Eastern Iowa Cmty.* and *Bettendorf* that the educational attainment lanes were a means by which public employers and the public employee bargaining units attempted to distinguish or differentiate various employees for the purpose of establishing wages. It is clear to the court that this was a practice that developed over the years based upon what was determined to be the employee's wages and where they converged on the salary matrix.

Today under amended section 20.9 the public sector employer will need to classify its employees into "job classifications" or "job titles" in order to determine what they are willing to pay for a given classification or title. That may be based upon a number of factors which may include training, experience and/or skill or other requirements of the job. It is not realistic to believe that the public employer will negotiate only on one "base wage" for all jobs which it must fill. The jobs that must be filled by the public employer will require different educational, training, experience and skill requirements. The potential employee will want to know how her/his skills will be compensated. It is this "base wage" that the public employee will examine to determine if this is a position she/he is qualified to perform and whether the compensation is at a level that for which she/he is willing to work. PERB's decision implicitly recognizes this concept. Once the classification is established by the public employer the mandatory subject of bargaining is the "base wage" or minimum wage that will be paid for this position.

[27] *Bettendorf,* PERB Case No. 598 and 602 at 8-9.

The Association's concern is what happens to the present bargaining unit members that are presently compensated in a matrix that provides the employee with the minimum amount paid for the work in that classification but also compensates them for the experience and skills they have developed while performing those duties in the past. Under PERB's decision the employer will need to determine how it intends to classify its present employees or the jobs they perform. To adopt the Association's proposal that each bargaining unit member has a unique set of education, training, experience and/or skills that requires the employer to adopt a classification or title for each bargaining unit member and thus negotiate base wages for each bargaining unit member is not a proper interpretation of the legislature's use of the phrase "base wages" unless the public employer utilizes this system for classifying its employees.

The court here cannot determine what those classifications or titles may be and it is not the function of the court to so. The court's task is to determine whether PERB's decision that under amended section 20.9 the educational attainment lanes are permissive subjects of bargaining is an error of law. The court finds that it is not. Likewise, the court finds PERB"s decision that once the employer identifies the various job classifications or job titles under which it will classify its various employees the base wage for that classification or job title is a mandatory subject of bargaining is not erroneous. Finally, the court finds that PERB's decision that the vertical steps in the Salary Schedule were permissive subjects of bargaining is not erroneous.

IT IS THEREFORE ORDERED that the decision of PERB is **AFFIRMED.**

State of Iowa Courts

Type: OTHER ORDER

Case Number	**Case Title**
CVCV054286	OSKALOOSA EDUCATION ASSO VS IA PUBLIC EMPLOYMENT

So Ordered

L. P. McLellan

Lawrence P. McLellan, District Court Judge,
Fifth Judicial District of Iowa