STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF:	)	
	)	
STATE OF IOWA,	)	
Public Employer,	)	
	)	
and	)	CASE NO. 100813
	)	
AFSCME IOWA COUNCIL 61,	)	
Petitioner/	)	
Certified Employee Organization.	)	
	)	

RULING ON NEGOTIABILITY DISPUTE

On February 27, 2017, the State of Iowa (Department of Administrative Services) filed a petition with the Public Employment Relations Board (PERB or Board) for the expedited resolution of a negotiability dispute which arose in the course of the parties' negotiation following the enactment and effective date of 2017 Iowa Acts, House File 291. The petition, filed pursuant to PERB rule 621—6.3(20), sought our ruling on the Iowa Code section 20.9 negotiability status of proposals made by AFSCME Iowa Council 61 (AFSCME or Union) concerning AFSCME-represented bargaining units which are not made up of at least 30 percent public safety employees.

Oral arguments were held before the Board on March 16, 2017. AFSCME was represented by Mark Hedberg and the State of Iowa was represented by Jeff Edgar. Both parties filed briefs.

The Board issued a preliminary ruling on the negotiability dispute on March 29, 2017, ruling on whether each or parts thereof the 59 proposals were

a mandatory, permissive, or excluded subject of bargaining. Both parties filed timely requests pursuant to PERB rule 621—6.3(4) for a final ruling on limited proposals.

I. STANDARD AND SCOPE-OF-BARGAINING PRINCIPLES.

Subjects of bargaining are divided into three categories: (1) mandatory subjects listed in Iowa Code section 20.9 on which bargaining is required if requested; (2) permissive subjects on which bargaining is permitted, but not required ("other matters mutually agreed upon"); and (3) what was "illegal," but are now called "excluded" subjects which are excluded by law from negotiations. *See, e.g., City of Clinton and AFSCME Local #888*, 2015 PERB 100011. A proposal's negotiability status is significant because only mandatory subjects of bargaining may proceed through statutory impasse procedures to binding arbitration, unless the parties agree otherwise. *Waterloo Educ. Ass'n v. Iowa Pub. Emp't Rel. Bd.*, 740 N.W.2d 418, 421-22 (Iowa 2007) (*Waterloo II*).

When determining whether a proposal is a mandatory subject of bargaining, PERB uses the two-pronged approach set forth in *State v. PERB*, 508 N.W.2d 668 (Iowa 1993), and *Northeast Cmty. Sch. Dist. v. PERB*, 408 N.W.2d 46 (Iowa 1987), and endorsed by the Court in *Waterloo II.* First, the Board engages in a definitional exercise to determine whether the proposal fits within the scope of a specific [mandatorily negotiable] subject listed in Iowa Code section 20.9.[1] . *Waterloo II,* 740 N.W.2d at 429. If this test is met, the next inquiry is whether

[1] All references are to Iowa Code (2017) as amended by 2017 Iowa Acts, House File 291 that was in effect at the time of this filing and before the publication of Iowa Code Supp. (2017).

the proposal is preempted or inconsistent with any provision of law. *Id.* Ordinarily, this two-step process resolves the question of negotiability. *Id.*

PERB looks only at the subject matter of a proposal 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 the definition of a section 20.9 mandatory bargaining subject. *Waterloo II,* 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,* 508 N.W.2d at 675. Rather, PERB must look to what the proposal, if incorporated through arbitration into the collective bargaining agreement, would bind an employer to do. *See 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. *See 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.

II. 2017 IOWA ACTS, HOUSE FILE 291.

2017 Iowa Acts, House File 291 became effective February 17, 2017, and included amendments to Iowa Code chapter 20 which distinguished bargaining rights for so-called "public-safety" bargaining units versus "non-public-safety"

units. For non-public-safety units such as the ones in this case, there are three other significant House File 291 amendments. Our resolution of the parties' negotiability dispute for the non-public-safety units are based on our interpretation and application of three other significant House File 291 amendments to chapter 20.

The first amendment dramatically reduced the subjects of bargaining a party could insist be negotiated for a non-public-safety bargaining unit by eliminating the former laundry list of 18 mandatory subjects and replacing it with the single mandatory subject of "base wages." Second, House File 291 legislatively overruled the Iowa Supreme Court's holding in *Waterloo II* that we give mandatory subjects of bargaining their common and ordinary meaning and specifically provided that we interpret them narrowly and restrictively. Third, House File 291 added a specific definition of "supplemental pay," which remains a mandatory subject of bargaining for public-safety bargaining units, but is now a subject specifically excluded from the scope of bargaining for non-public-safety units.

III. ANALYSIS.

In the dawn of House File 291, we were presented with negotiability disputes in several cases. *Columbus Cmty. Sch. Dist. and Columbus Educ. Ass'n,* 2017 PERB 100820 (*Columbus*), and *Oskaloosa Cmty. Sch. Dist. and Oskaloosa Educ. Ass'n*, 2017 PERB 100823, *aff'd Oskaloosa Educ. Ass'n v. Iowa Pub. Emp't Rel.Bd.*, Case No. CVCV054286 (Polk County Dist. Ct. 2018) (*Oskaloosa*). In *Columbus* we defined the new mandatory bargaining subject of "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." *Columbus,* 2017 PERB 100820 at 5. We also determined that while an employer of a non-public-safety bargaining unit is under no obligation to bargain over whether a given job classification, category or title will exist or not, because "job classifications" is merely a permissive subject of bargaining for such units, once the employer creates or maintains a classification in which bargaining unit members may be or are employed, the employer has a duty to bargain the base wage for that classification. *Id.* at 9-10; *Oskaloosa*, 2017 PERB 100823 at 9.

The principles we expressed in those rulings are equally applicable here.

PROPOSAL 3: Article II (Recognition)

Section 4 Union Leave
A. Elected constitutional officers of the Union and/or its affiliated locals/chapters shall, upon written request of the Union and/or its affiliated locals/chapters, be granted a leave of absence without pay for the term of office, not to exceed two (2) years. Appointed officials of the Union and/or its affiliated locals/chapters shall, upon written request of the Union and/or its affiliated locals/chapters, be granted a leave of absence without pay for the term of office, not to exceed two (2) years unless the absence of the employee would cause a substantial hardship on the operating efficiency of the employing unit. The Employer agrees to provide the Union an explanation of why the request constitutes a hardship. Grievances involving the issue of whether a substantial hardship does, in fact, exist may be appealed directly to arbitration pursuant to Article IV of this Agreement. Notwithstanding the above, elected or appointed officials of the Union and/or its affiliated locals/chapters may elect to take vacation or earned compensatory time in lieu of a leave of absence without pay.
B. These same elected officers shall be released for monthly local/chapter meetings and quarterly Council 61 meetings under the same rules as above. The employee will provide the employee's supervisor with ten (10) calendar days written notice for these meetings. A Union officer's leave supersedes any other scheduled leave of bargaining unit members. Any special meeting requiring less than ten (10) calendar days notice must be arranged through the Department of Administrative Services-Human Resources Enterprise (DAS-HRE). Union leave with less than ten (10) calendar days advance notice shall be limited to ten (10) days per employee per year.

C. Upon the request of the President of AFSCME Iowa Council 61 to the Chief Operating Officer of the Department of Administrative Services – Human Resources Enterprise, employees shall be granted a Union leave for other Union activities. Such leave(s) shall be limited to ninety (90) calendar days per person in each fiscal year. Pursuant to subsection A of this Section, the leave may be denied if the absence of the employee would cause a substantial hardship on the operating efficiency of the employing unit.
D. During Union leave without pay for thirty (30) calendar days or less, employees shall continue to accrue sick leave and annual (vacation) leave and the Employer will continue to pay the Employer's share of all insurances.
At the written request of the President of AFSCME Iowa Council 61, during periods of leave of thirty (30) calendar days or less, the Employer will continue to pay the employee's wages so that the employee's retirement contributions will be uninterrupted. The Employer shall submit a billing including the dates of the leave and the number of hours used to AFSCME within thirty (30) calendar days of the end of the pay period in which the leave occurred. The billing will include gross wages including the Employer's share of retirement and federal payroll taxes paid during such periods of Union leave without pay. The Employer shall receive reimbursement from the Union within thirty (30) calendar days following receipt of the Employer's billing. Failure to reimburse the Employer in accordance with this provision will nullify this subsection in its entirety for the period remaining in the term of this Agreement.

Section 5 Union Conventions and Conferences

A. Duly elected Union delegates or alternates to the annual conventions of AFSCME Iowa Council 61, AFL-CIO and the Iowa Federation of Labor, AFL-CIO shall be granted time off without pay, not to exceed a total of ten (10) work days annually, to attend said conventions.
B. Duly elected Union delegates or alternates to the biennial convention of AFSCME International, AFLCIO shall be granted time off without pay, not to exceed a total of ten (10) work days, to attend said convention.
C. Union representatives selected to attend Union conferences shall be granted time off, without pay, not to exceed ten (10) work days annually, to attend said conferences.
D. The Union shall give the Employer at least ten (10) work days advance notice of the employees who will be attending such functions whenever possible. Time off taken pursuant to this Section may be charged to vacation, earned compensatory time, or leave of absence without pay as the individual employee may designate.

RULING: This proposal is a permissive subject of bargaining.

Sections 4 and 5 address union leave for AFSCME members. We have previously determined union leave falls within the scope of the subject "leaves of absence." *See, e.g., West Des Moines Cmty. Sch. Dist. & West Des Educ. Support Personnel Ass'n*, 1982 PERB 2156 at 4-6. Although the subject, "leaves of

absence," is no longer a mandatory subject of bargaining for non-public-safety units, it is a permissive subject. Thus, Sections 4 and 5 of Proposal 3 are a permissive subject of bargaining.

PROPOSAL 5: Article IV (Grievance Procedure)

Section 1 Definition

A. A grievance shall be a written complaint alleging a violation involving the application and interpretation of the provisions of this Agreement.

B. A grievance shall contain a statement of the grievance by indicating the issue(s) involved, the relief sought, the date the incident(s) or violation(s) took place, if known, and the specific Section or Sections of the Agreement involved. The grievance shall be presented to the Appointing Authority or his/her designee, or the District Director or his/her designee for CBC, on forms mutually agreed upon and furnished by the Union, and signed and dated by the Union. The grievance form will state the name of the employee(s) authorizing the filing of the grievance. An aggrieved employee shall have the right to a Union representative appointed by the Union. If a grievance form lacks any of the information required by this subsection, the grievance shall be returned to the Local Union Steward who filed the grievance with a copy to the Union and the Local 15 Union with an explanation. The Local Union Steward will have seven (7) calendar days from the date of the read receipt to resubmit the original grievance with the required information.

C. Any bargaining unit employee shall have the right to meet and adjust his/her individual complaint with the Employer.

D. The arbitration provisions of this Agreement may only be invoked with the approval of the Union and, in the case of an employee's grievance, only with the approval of the employee.

E. All grievances must be presented promptly and no later than fourteen (14) calendar days from the date the grievant first became aware of, or should have become aware of with the exercise of reasonable diligence, the cause of such grievance; however, under no circumstances shall a grievance be considered timely after six (6) months from the date of occurrence.

Section 2 Grievance Steps

(Board of Regents, see Appendix M; Community Based Corrections, see Appendix S)

A. Step 1

Within fourteen (14) calendar days of receipt of the written grievance from the employee or his/her Union representative, the Appointing Authority or his/her designee, or the District Director or his/her designee for CBC, will meet with the appropriate Union representative at a mutually agreed upon time and date (with or without the aggrieved employee) and attempt to resolve the grievance. A written answer will be placed on the grievance following the meeting by the Appointing Authority or his/her designee, or the District Director or his/her designee for CBC, and returned to the employee and the Union representative within fourteen (14) calendar days from receipt of the written grievance submitted to the Appointing

Authority. Settlements at this step will be non-precedent setting unless designated otherwise.

B. Step 2

If dissatisfied with the Employer's answer in Step 1, to be considered further, the grievance must be appealed by facsimile transmission, regular U.S. mail, local mail (institutional, departmental or interdepartmental) or hand-delivered to the Chief Operating Officer of DAS-HRE or the Officer's designee, or the District Director or his/her designee for CBC, within fourteen (14) calendar days from receipt of the answer in Step 1. Within forty-five (45) calendar days after the receipt of the appeal at Step 2, the designee of the Chief Operating Officer of DAS-HRE, or the District Director or his/her designee for CBC, will meet with the appropriate Union representative (with or without the aggrieved employee) and attempt to reach resolution of the grievance. On grievances which do not involve discipline or discharge, the parties will, where practicable and feasible, meet via a telephone conference. Within thirty (30) calendar days following this meeting, a written answer will be issued and attached to the grievance by the Chief Operating Officer of DAS-HRE or the Chief Operating Officer's designee, or the District Director or his/her designee for CBC, and returned to the grievant and the Union representative. Step 2 answers shall be sent by facsimile transmission, regular U.S. mail, local mail (institutional, departmental or interdepartmental), hand-delivered, or e-mail (if the grievant provides an e-mail address). E-mails will be considered confidential personnel documents in accordance with Iowa Code Section 22.7. (Board of Regents, see Appendix M; Community Based Corrections, see Appendix S) Note: Grievances filed under Article IV, Section 9 will be eligible to proceed to GRIP. All other grievances will be eligible to proceed to arbitration.

C. Step 3 – Grievance Resolution Improvement Process (GRIP):

Disciplinary grievances which have not been settled under the foregoing procedures are eligible to be heard by the Grievance Resolution Panel. To be considered further, the grievance must be placed on the Grievance Resolution Panel docket within thirty (30) calendar days from receipt of the answer in Step 2 by the keeper of the docket. The issue as stated in Step 2 shall constitute the sole and entire subject matter to be heard by the Grievance Resolution Panel, unless the parties mutually agree to modify the scope of the grievance.

The procedures to be used by the Grievance Resolution Panel will be governed by the "Rules of Procedure for the Grievance Resolution Improvement Process." The Rules of Procedure are set forth in Section 14 of Article IV of the Agreement. The parties may, however, agree to a more detailed set of rules of procedure outside of this Agreement. Before rules of procedure not contained within this Agreement take effect and become enforceable they must be signed by both the President of AFSCME Iowa Council 61 and the Director of DAS. Any rule of procedure that is in conflict with this Agreement or the law is unenforceable.

D. Step 4 – Arbitration

Grievances which have not been settled under the foregoing procedure are eligible for arbitration. The issue as stated in Step 2 shall constitute the sole and entire subject matter to be heard by the arbitrator, unless the parties mutually agree to modify the scope of the hearing. If an unresolved grievance is not arbitrated, it shall be considered terminated on the basis of the Step 2 answer without prejudice or precedent in the resolution of future grievances.

For the purpose of selecting an impartial arbitrator, the parties will meet upon request and if unable to agree on an impartial arbitrator, the parties or party, acting jointly or separately, shall request PERB to submit a five (5) member panel of arbitrators. If the panel submitted by PERB is unacceptable to either party, the parties shall request a second panel of arbitrators from PERB. The AFSCME representative and the DAS-HRE representative will contact the arbitrator and set a date for the arbitration hearing. After the date for the arbitration hearing is established, the AFSCME representative and the DAS-HRE representative will schedule a meeting, not less than one (1) week prior to the grievance arbitration hearing date, to exchange all evidence relevant to the grievance that is available to them at that time through the exercise of reasonable diligence. If not provided at the pre-arbitration meeting, evidence cannot be offered at the arbitration hearing unless the party can prove that the evidence was not available to the party through the exercise of reasonable diligence.

Where two (2) or more grievances are appealed to arbitration, an effort will be made by the parties to agree upon the grievances to be heard by any one (1) arbitrator. On the grievances where agreement is not reached, a separate arbitrator shall be appointed for each grievance. The cost of the arbitrator and expenses of the hearing will be shared equally by the parties; however, the costs of transcripts shall be borne by the requesting party without having to furnish a copy to the other party, unless the parties mutually agree to share the entire cost. Except as provided in Section 8 of this Article, each of the parties shall bear the cost of their own witnesses, including any lost wages that may be incurred. The parties agree to share any cancellation fees for arbitration hearings canceled or postponed by mutual agreement. The party that is solely responsible for the cancellation or postponement of an arbitration hearing without the mutual consent of the other party shall pay the entire cancellation fee.

The arbitrator shall only have authority to determine the compliance with the provisions of this Agreement. The arbitrator shall not have jurisdiction or authority to add to, amend, modify, nullify, or ignore in any way the provisions of this Agreement and shall not make any award which in effect would grant the Union or the Employer any matters which were not obtained in the negotiation process.

The decision of the arbitrator shall be final and binding on both parties to this Agreement provided any such decision does not exceed the arbitrator's jurisdiction or authority as set forth above.

Section 3 Time Limits

Grievances not appealed within the designated time limits in any step of the grievance procedure may be denied by the Employer on the basis of timeliness. The Union reserves the right to submit such grievances to arbitration. The parties agree, however, that in grievances where timeliness is an issue, the grievance may be submitted by the Union to the next higher step through the date the grievance answer should have been issued in order to allow the parties to attempt to resolve it.

Grievances not answered by the Employer within the designated time limits in any step of the grievance procedure may be appealed to the next step within fourteen (14) calendar days of the date the grievance answer should have been issued. In order to be considered timely, a grievance must be scheduled for an arbitration hearing no later than nine (9) months from the date the grievance was answered by the Employer at Step 2. In order to be considered timely, a discharge grievance must be scheduled for an arbitration hearing no later than one hundred twenty (120) days from the

date the grievance was answered by the Employer at Step 2. The Union may, at its option, seek to schedule an arbitration hearing any time after the Step 2 was due in the event the Employer fails to timely provide the response. Authority to schedule a hearing rests with the arbitrator should the parties disagree. The parties may, however, mutually agree in writing to extend the time limits in any step of the grievance procedure. In the event the U.S. mail is used, the mailing of the grievance or response thereto shall be considered timely if postmarked within the time limits.

Section 4 Retroactivity

Settlement of a grievance may or may not be retroactive as the equities of particular cases may demand. In any case, where it is determined that the award should be applied retroactively, the maximum period of retroactivity allowed shall be a date not earlier than six (6) months prior to the date of initiation of the written grievance in Step 1.

Section 5 Exclusive Procedure

The grievance procedure set out above shall be exclusive and shall replace any other grievance procedure for adjustment of any disputes arising from the application and interpretation of this Agreement.

Section 6 Names of Stewards and Management Representatives

For informational purposes only, the Union shall provide DAS-HRE with a written list setting forth the names and jurisdictional areas of Union representatives. The Employer shall supply the Local Union with a list of Management representatives to contact on grievance matters.

Section 7 Representation

An employee may consult with a local Union representative during working hours relative to a grievance matter by first contacting the employee's supervisor. The employee's supervisor shall arrange a meeting to take place as soon as possible for the employee with a Union representative through the Union representative's supervisor.

Section 8 Processing Grievances

Union representatives who are members of Judicial Branch or Executive Branch bargaining units and grievants will be permitted a reasonable amount of time to process grievances during their regularly scheduled hours of employment. Processing grievances shall be defined as investigating, filing, and attending any step meeting and/or hearing regarding grievances. However, only one (1) local Union representative will be in pay status for any one (1) grievance. Whenever possible, the Union representatives will provide twenty-four (24) hours[-]notice to their supervisor(s).

Further, in a group grievance, up to three percent (3%), but not less than one (1) nor more than ten (10) of the grievants shall be in pay status as spokesperson(s) for the group. Group grievances are defined as, and limited to, those grievances which cover more than one (1) employee and which involve like circumstances and facts for the grievants involved. The Employer is not responsible for any compensation of employees or Union representatives for time spent processing grievances outside their regularly scheduled hours of employment.

The Employer is not responsible for any travel or subsistence expenses incurred by grievants or Union representatives in the processing of grievances. Notwithstanding the foregoing provisions of this Section, the Employer agrees to conduct all grievance meetings involving third shift employees either during that shift or at a time which is contiguous to the employee's shift. The Employer is not responsible for any compensation of third shift employees for such grievance meetings unless the Employer

specifically requests, or if the parties mutually agree, that the grievant attend the hearing, in which case the grievant shall be compensated for the actual time spent in such hearing at his/her regular hourly rate and shall not be counted as hours worked for purposes of computing overtime.

Section 11 Exclusion of Grievant

The aggrieved employee is entitled to be present at all steps of the grievance procedure. Should the employee be excused by either party, the grievance shall be processed in the absence of the aggrieved employee and the Union will be allowed a maximum of two (2) representatives in pay status.

Section 12 Exchange of Information for Processing Grievances

A. The Union and the Employer agree that it is incumbent upon the parties to share all information available regarding grievances involving the Union, employees, and the Employer.

B. Weingarten principles (the right of an employee who reasonably believes that they may be subject to discipline to have, upon the employee's request, a Union representative present during the investigatory interview) shall apply during investigatory interviews of an employee.

C. Upon request from the Union representative, the Employer will provide that Union representative with written statements of witnesses, if they exist.

D. Upon request from the Employer's representative, the Union will provide the Employer's representative with statements of witnesses, if they exist.

E. Employees who receive witness statements must comply with the State's policy that witness statements and the information contained in the statements will not be redisseminated to any person not directly involved with the processing of the grievance. Employees who violate the State's policy on redissemination will be subject to disciplinary action.

F. When a grievance is scheduled for arbitration, if the representative of either party desires to interview a witness prior to the arbitration hearing and the witness has been interviewed by the Employer or the Union in the course of a grievance investigation, the interview shall be conducted in the presence of a representative from DAS-HRE. Witnesses are not required to grant the interview, however, such interviews, when conducted, shall be limited to the witness, an AFSCME Iowa Council 61 staff representative or attorney, and the representative from DAS-HRE.

Section 13 Resolution of Timeliness Arbitrability Issues

Where an issue exists as to the timeliness arbitrability of a particular grievance, the Chief Operating Officer of DAS-HRE or the Chief Operating Officer's designee shall give written notice to the Union. Following written 27 notice, the timeliness dispute shall be submitted to an arbitrator, other than the arbitrator selected to determine the merits of the grievance, upon written submissions and by telephone hearing only.

Where the timeliness of a particular grievance is submitted to arbitration, the date for such arbitration shall be scheduled within thirty (30) days following the date that DAS-HRE provided notice to the Union, and a decision rendered within thirty (30) days following the date of the timeliness arbitrability hearing. The party that does not prevail in the timeliness dispute must pay the cost of that hearing.

Section 14 Grievance Resolution Improvement Process (GRIP)

The Department of Administrative Services – Human Resources Enterprise Chief Operating Officer or General Counsel and the President of AFSCME Iowa Council 61 will establish a regular meeting schedule to discuss how the Grievance Resolution Improvement Process (GRIP) is working, determine if there are problems that need to be resolved, and develop a plan for resolution of the issues.

A. The parties agree to utilize GRIP for all departments. GRIP will be limited to twenty (20) disciplinary cases per month.

B. Operation of Panel

1. Rules of Procedure

The Panel shall consist of four (4) representatives: two (2) representatives from AFSCME Iowa Council 61 and two (2) representatives from the State. The operation of the Panel shall be in accordance with these Rules 28 of Procedure and such other rules as may from time to time be adopted by mutual agreement between the parties and signed by both the President of AFSCME Iowa Council 61 and the Director of DAS.

2. Order of Cases

Every attempt will be made to hear docketed discharge cases during the time period scheduled for the case. Cases may be deadlocked in advance of the hearing.

3. Hearings

The Panel will hear presentation from each party to the grievance. Each party will be permitted a maximum of twenty (20) minutes [thirty (30) minutes for disciplinary terminations] for its presentation Witness statements and supporting documentation may be provided. Any information not presented at Step 2 of the grievance procedure that is to be used by either presenter will be exchanged between the parties at least seven (7) days prior to the meeting of the Panel. Exception will be allowed for evidence or witness statements submitted up to forty-eight (48) hours in advance of the meeting, if the information is mutually agreed upon. Information allowed under this exclusion must be of such significant nature as to potentially alter a reasonable decision on the grievance. If the party not submitting the documentation can make a justified argument that the party submitting the information had knowledge of the evidence or statements prior to the seven (7) day rule, such late evidence or statements will not be allowed.

During the presentation, only Panel members, the parties presenting the case and those directly involved in the specific case being heard shall be allowed to sit in the immediate area where the case is being conducted. Other members of the Panel observing the case shall not participate in the presentation, the discussion or the questioning.

The Employer will present first. Each party shall have twenty (20) minutes [thirty (30) minutes for disciplinary terminations] to present its case in chief. Each party shall declare, prior to the presentation of its case whether there will be a co-presenter on any respective case. The number of presenters shall be limited to two (2) individuals. Any co-presenter shall only supplement the presentation of the case in chief. Both sides will have an opportunity to summarize and rebut; however no co-presenter may respond during the summation and rebuttal portion of the hearing. Summation and rebuttal shall not extend beyond five (5) minutes [ten (10) minutes for disciplinary terminations].

The AFSCME Iowa Council 61 Representative or the designated AFSCME steward will normally handle the Union presentation. The Department Director or his/her representative will normally handle the presentation for the Employer.

After each party has submitted its case and rebuttal, the panel members will be free to ask questions of the parties. After such questioning, the Panel will retire to executive session and will vote, and thereby render its decision. Voting by a show of hands will be sufficient. When the Panel goes into executive session, all others must retire from the room. After a

decision has been reached by a majority vote of the Panel, the decision shall be reduced to writing and provided to the parties in a manner agreed upon by the Panel. The Panel has the authority to support, reject or modify any action taken. Decisions of the Panel are final and binding and may or may not be precedent setting as the Panel determines. Failure to reach a majority vote will create a deadlock or tied vote and such shall be recorded as the outcome. In the event of a deadlock, the grievance may proceed to arbitration as outlined in Step 4 of Section 2(D). (The Rules of Procedure, and any additional agreed upon rules, shall be posted on the DAS's website.)

RULING: This proposal is a permissive subject of bargaining.

The above-referenced sections of Proposal 5 address "grievance procedures for resolving any questions arising under the agreement." We concluded this is a permissive subject of bargaining as "grievance procedures" for the non-public-safety units.

PROPOSAL 6: Article V (Seniority)

Section 1 Definition
A. For employees not covered by a collective bargaining agreement on July 1, 2003, seniority means an employee's length of continuous service with the Employer in a permanent position since his/her date of hire. Any length of service in a temporary position shall be included in the computation of seniority if the employment was in the same classification as and contiguous to the appointment to a permanent position.
B. In the event two (2) employees have the same original date of employment, seniority of one as against the other shall be determined by the last four (4) digits of the social security number, with the employee having the lower last four (4) digits of the social security number being considered as having the greater seniority.
C. An employee's continuous service record shall be broken by voluntary resignation, discharge for just cause, or retirement. However, if an employee leaves work for any reason other than those listed above, the employee shall retain his/her original seniority date for a period equal to his/her length of employment up to a maximum of two (2) years. Any period of absence of more than two (2) years shall represent a break in continuous service.
D. Management will be required to apply seniority as defined above only as specifically provided in this Agreement and subject to any limitations set forth in any particular Article or Section of this Agreement.
E. An employee covered by a non-AFSCME collective bargaining agreement shall have no seniority upon entrance or return to a position covered by this Agreement.
F. For all other employees, seniority means an employee's length of continuous service with the Employer since his/her date of hire in a permanent position covered by this Agreement. Any length of service in a temporary position shall be included in the computation of seniority if the

employment was in a classification covered by this contract and contiguous to the appointment to a permanent position. No employee in a position covered by this Agreement on July 1, 2003, shall lose seniority by virtue of operation of this Section.

Section 2 Seniority Lists

A. The Employer shall prepare and post, on existing bulletin boards, seniority lists as defined in this Article. The lists shall be updated semiannually and contain each employee's name, classification and seniority date. A copy of the seniority list shall be furnished to the local union at the time of posting.

B. Employees shall have ninety (90) days in which to appeal their seniority date after which time the seniority date shall be presumed correct.

Section 3 Retroactivity Prohibited

Those employees in the bargaining unit employed prior to the effective date of this Agreement shall retain their current seniority date (date of hire or adjusted date of hire, if applicable) as established by DAS-HRE or the Board of Regents (BOR) prior to the effective date of this Agreement. For employees at the Department of Commerce, Alcoholic Beverages Division, all Warehouse Operations Workers and Transport Drivers who were employed when the State became the Employer will have the same seniority date. The employee's actual date of hire with the warehouse and transport operations will determine seniority.

RULING: This proposal is a permissive subject of bargaining.

Proposal 6 focuses on how seniority is calculated once employees are in the bargaining unit, eligibility for accrual, and how the employer informs the employees and union of its seniority list. The section 20.9 topic "seniority" covers such matters. *See Amalgamated Transit Union Div. 329 & City of Dubuque*, 2004 PERB 6828 at 5. "Seniority" proposals remain a mandatory subject of bargaining for public-safety units, but is now a permissive, not excluded, subject of bargaining for non-public-safety units. Accordingly, we concluded this proposal to be a permissive subject of bargaining as "seniority."

PROPOSAL 7: Article VI (Layoff Procedure)

Section 1 Application of Layoff

The Union recognizes the right of Management to layoff or to reduce the hours of employment in accordance with the procedures set forth in this Article. Such procedures shall not apply to:

A. Temporary layoff of twenty (20) consecutive calendar days or less. In such cases, employees will be laid off by seniority within classification and

work unit. For temporary layoffs of greater than twenty (20) consecutive calendar days, the parties shall meet and agree upon temporary layoff procedures. During all temporary layoffs the Employer agrees that employees in the temporary layoff unit may volunteer for any part of the temporary layoff with the most senior volunteer(s) being accepted unless the absence of the employee would cause a hardship on operating efficiency. Voluntary temporary layoffs shall be for a minimum of one (1) calendar week, unless the parties agree to a shorter length of time. During the temporary layoff, employees shall continue to accrue sick leave and annual (vacation) leave and the Employer will continue to pay the Employer's share of all insurance (for BOR temporary layoffs, see Appendix M); and/or

B. Seasonal layoff of seasonal employees; and/or

C. Employees with an academic year appointment at institutions and schools, during recesses in the academic year and/or summer; and/or

D. Unpaid volunteers only with the agreement of the President of AFSCME Iowa Council 61.

Section 2 General Layoff Procedures

When a layoff or hours reduction occurs, the following general rules shall apply:

A. Layoff shall be by classification and subtitle as set forth in the job specifications.

B. Layoff shall be by organizational unit.
(General Government, Board of Regents, and Community Based Corrections, see Appendix B; Department of Revenue, see Appendix Q)

C. An agency may not layoff permanent employees until they have eliminated all non-permanent employees within the layoff unit in the same classification in the following order: emergency, temporary, provisional, intermittent, trainee, and probationary. Employees in the layoff unit may volunteer for layoffs with the most senior volunteer(s) being accepted. Employees may volunteer only with the agreement of the President of AFSCME Iowa Council 61.

D. The Employer shall notify the Union at least sixty (60) calendar days in advance of any anticipated layoff.

E. Each employee affected by a reduction in force shall be notified in writing of layoff at least twenty (20) working days prior to the effective date of the layoff unless budgetary limitations require a lesser period of notice.

F. Employees in the layoff unit shall be laid off in accordance with seniority and ability. Layoff shall be by seniority with the least senior employee being laid off first unless the least senior employee possesses special skills and ability required to meet the needs of the Employer, and that the senior employee must also possess the academic qualifications required for the position. In the case of classifications which are used in research laboratories in academic departments of the Board of Regents institutions, the Employer need not retrain an employee to acquire the skills specific to the research projects conducted.

G. The position occupied by the least senior employee in the classification subject to the layoff shall not be considered a vacancy pursuant to Article VII; therefore, this position shall not be posted for transfer.

H. A permanent employee in a classification in which layoffs are to be effected may, in lieu of layoff, elect bumping to the next lower classification in the layoff unit in the same series as the classification in which layoffs are to be effected or, in the absence of a lower classification in the same series, to a classification in the layoff unit which the employee has formerly occupied while in the continuous employ of the agency, or in the absence

of a classification in the layoff unit which the employee has formerly occupied while in the continuous employ of the agency, to an equal or lower classification in the layoff unit for which they meet the minimum qualifications of the job. The assignment in the classification will be at the Appointing Authority's discretion; however, such assignment shall not be permitted if the result would be to cause the bumping of a permanent employee with greater seniority. To exercise the right of bumping, in lieu of layoff, the employee must notify the Appointing Authority, in writing, of such election, which must be received or postmarked no later than five (5) calendar days after receiving notice of layoff. Any permanent employee displaced under these provisions shall have the right of election as provided herein.

The Employer shall notify the employee in writing of the exact location of the position to be bumped into. After receipt of this notification, the employee shall again have five (5) calendar days in which to notify the Appointing Authority, in writing, to either accept the position or be laid off.

Any employee who elects to bump in lieu of layoff shall have the right of recall to the classification he/ she formerly occupied, provided he/she meets the qualifications of the position, before any other person may be promoted to or a new employee hired for such classification by the Appointing Authority enforcing the layoff. Upon bumping, an employee shall retain his/her current rate of pay except that if such rate of pay is higher than the highest rate currently paid for the classification to which the employee bumps, his/her pay shall be reduced to that rate of pay. Additionally, if federal funds are involved, the employee upon bumping will receive the salary provided by the federal grant. In such an event, the Employer will make a good faith effort to obtain additional federal funds. Any employee laid off because of reduction in force shall be offered a position in the classification from which he/she was laid off provided he/she meets the minimum qualifications for the position, before a new employee may be hired for such position by the Appointing Authority enforcing the layoff, if such opening becomes available within two (2) years of such layoff because of a reduction in force. Employees who are covered by another collective bargaining agreement cannot bump an employee covered by this Agreement.

I. The Employer shall maintain a recall list of employees who were laid off, who exercised their bumping rights, or who made written notice to the Employer of their recovery from long-term disability or injury after the expiration of a leave of absence:

1. Employees who exercised bumping rights shall be placed on the recall list for the class from which they were laid off.

2. Employees who are laid off or who make written notice to the Employer of their recovery from a long-term disability or injury shall be placed on the recall list for the class they held prior to layoff or disability. In addition, the employee may also designate up to fifteen (15) other classes, provided he/she meets the qualifications and/or passes the applicable DAS-HRE merit or BOR merit test, and the specific counties to which the employee will accept recall. The designation of classes or counties may be changed monthly by the employee through procedures agreed to by AFSCME Iowa Council 61 and the Employer. If an employee is recalled to a position in a classification which the employee has not previously held, the employee will serve a probation period. If the recalled employee fails to successfully complete the probation period, the employee will be laid off

without bumping rights and placed on the recall list as described above for a period of two (2) years.

3. Employees who refuse to accept any reassignment in excess of twenty-five (25) miles of the original work site shall be placed on the recall list as described in numbers one (1) and two (2) above.

4. Failure to accept any position listed by the employee pursuant to number two (2) above when offered by certified mail within five (5) calendar days after notice of recall shall negate any further recall rights.

5. If a laid off employee accepts a temporary position, he/she shall remain on the recall list.

J. When a decision is made by the Employer to contract or subcontract work which would result in the layoff of bargaining unit members, the State agrees to a notification and discussion with the Union not less than sixty (60) days in advance of the implementation. For purposes of this paragraph only, employees laid off as a result of a decision to contract or subcontract work may designate up to twenty-five (25) other classes for purposes of recall, provided he/she meets the qualifications and/or passes the applicable DAS-HRE merit or BOR merit test, and identifies specific counties to which the employee will accept recall. All other recall provisions of (I) above shall apply.

K. The determination of the layoff order is subject to the grievance procedure commencing at Step 2. The implementation of such layoff shall not be delayed pending the resolution of such grievances.

L. Whenever a permanent vacancy as defined in Article VII, Section 5 occurs, before a new or temporary employee is hired, employees shall be allowed to transfer or be recalled in the order set forth in Article VII, Section 6.

(Board of Regents, see Appendix M)

RULING: This proposal is a prohibited subject of bargaining.

Proposal 7 addresses layoff procedures and the application to bargaining unit members. The order and manner of layoff are "procedures for staff reduction" provisions. *See State of Iowa (Dep't of Admin. Servs.) & AFSCME Iowa Council 61*, 2013 PERB 8604 at 9, *aff'd AFSCME Iowa Council 61 v. Iowa Pub. Emp't Rel. Bd.*, 846 N.W.2d 873 (Iowa 2014). As we concluded, the proposal is now an excluded subject of bargaining as "procedures for staff reduction" for non-public-safety units.

PROPOSAL 8: Article VII (Transfers)

Section 1 Eligibility

A. Employees must have been in their current classification for at least six (6) months in order to be eligible for transfers pursuant to this Article, but may not transfer more than twice during the life of the Agreement. Transfers to a position under the supervision of the employee's current supervisor will not be counted towards the limitation of two (2) transfers during the life of the Agreement. However, if an employee goes into a classification with a lower pay grade in lieu of layoff, the employee shall immediately be eligible for transfers pursuant to this Article. Additionally, an employee who is required to change shifts upon promotion shall be immediately eligible for transfer to a different shift within the employing unit.

B. Employees who desire to transfer to another position within the same classification, either between employing units of a State agency or between State agencies, shall file a written request as prescribed by the agency or, if between State agencies, with the appropriate departmental personnel office indicating that interest.

Section 2 Transfers Within Employing Units

A. The Employer shall post all openings indicating the specific location, shift, work unit and days off. Specific location shall be defined as the organizational unit of the agency. Specific shift shall be defined as the hours of work. Specific work unit shall be defined as the area inside of the organizational unit where the employee performs his/her work. Specific work unit can be defined as rotating post or relief post. Specific days off shall be the days off that are assigned to the position.

A period of five (5) work days from the date of the announcement shall be allowed for interested employees to file a written request to be included in the group of applicants to be considered for that vacancy. At the close of the five (5) work day posting period, the Employer will review those requests from any employee in the same employing unit who is in the same classification as the vacancy. When an employee applies for a posted position and has not removed his/her name by the close of the posting, the employee must accept the job, if offered. The Employer shall offer the position to the most senior bargaining unit employee who has filed a transfer request. In the event an employee is the most senior bidder for more than one (1) position simultaneously, he/she shall immediately accept one (1) of the positions.

B. The Employer shall transfer the most senior employee who makes the transfer request for the open position provided he/she possesses the ability to perform the duties as assigned and meets any job related special or selective certification requirements. Such requirements shall be reflected on the posting. The Employer may deny transfers if the transfer would substantially impair the Employer's ability to maintain operational efficiency. The Employer is not obligated to retrain employees in order to qualify them for transfers under the provisions of this Article. (Board of Regents, see Appendix M; Iowa Workforce Development, see Appendix T; Department of Natural Resources, see Appendix P, Motor Vehicle Officers, see Appendix I)

Section 3 Transfers Between Employing Units Within a State Agency

In the event a vacancy is not filled by transfer of an employee under the provisions of Section 2 of this Article, the Employer shall consider interested employees who are in the same classification as the vacancy from other employing units of the agency who have indicated an interest in the specific

location, shift, work unit and days off by submitting a transfer request. The transfer request must be submitted prior to transfer opportunity posting in Section 2. The Employer shall transfer the most senior employee who makes such request for the open position provided he/she possesses the ability to perform the duties as assigned and meets any job related special or selective certification requirements. The Employer may deny transfers if the transfer would substantially impair the Employer's ability to maintain operational efficiency. The Employer is not obligated to retrain employees in order to qualify them for transfers under the provisions of this Article. The employee shall have three (3) working days in which to accept or decline the offer in writing.
(Iowa Workforce Development, see Appendix T

Section 4 Transfers Between State Agencies

In the event a vacancy is not filled under the provisions of Sections 2 or 3 of this Article, the Employer shall consider interested employees in the same classification as the vacancy from other State agencies who have filed a transfer request. The Employer shall offer the position to the most senior employee who makes such request for the open position. The employee shall have three (3) working days in which to accept or decline the offer in writing.

Section 5 Definition of Permanent Vacancy

For purposes of this Article, a permanent vacancy is created:

A. When the Employer has approval to increase the workforce and decides to fill the new positions;

B. When any of the following personnel transactions take place and the Employer decides to replace the previous incumbent: termination, transfer out of the bargaining unit, promotion, or demotion;

C. If no employee has indicated a desire to transfer to a vacancy and the Employer fills such vacancy by transfer of an employee from another classification in the same salary range and determines that the vacated position is to be filled, such position shall be subject to the provisions of this Article;

D. Transfers within the bargaining unit resulting from Sections 2, 3, or 4 above;

E. Where the Employer creates new shifts and/or days off schedule.

Section 6 Transfer Limitations

A. The application of the procedures in this Article shall be limited to the original vacancy and the six (6) subsequent vacancies resulting from the filling of the original vacancy.

B. Employees may not transfer under the provisions of this Article more often than once every six (6) months unless reassigned by Management within the six (6) month period.

C. Employees who decline two (2) transfer opportunities within a twelve (12) month period will have their names removed from the register for a period of six (6) months. It is the responsibility of the employee to resubmit a transfer request following the six (6) month period.

D. Employees transferring under the provisions of this Article shall not be eligible for payment of moving expenses by the Employer.

E. Employees transferring into federally funded positions will receive the salary provided by the federal grant.

F. In all employing units in which vacancy lists are maintained the local Union shall be allowed to inspect vacancy lists on a monthly basis.

G. Nothing in this Article shall be construed as a limitation on the Employer's ability to reassign employees to meet agency needs as determined by the Employer. Employees reassigned more than twenty-five

(25) miles from the original work site will be provided a twenty (20) working day notice. Employees who refuse to accept such reassignment will be afforded the rights set forth in Article VI, Section 2(I(3)).

H. Transfers will be granted as follows:

1. Transfer within the employing unit pursuant to Section 2.
2. Recall within the employing unit to the class and status (full-time or part-time) from which laid off.
3. Promotion, demotion, reclassification within the employing unit (Employer's discretion).
4. Transfer within the employing unit of part-time employees to full-time positions or full-time employees to part-time positions.
5. Transfer between employing units pursuant to Section 3.
6. Recall between employing units to the class from which laid off.
7. Promotion or demotion between employing units or between agencies (Employer's discretion).
8. Transfer between employing units of part-time employees to full-time positions or full-time employees to part-time positions.
9. Transfer between agencies pursuant to Section 4.
10. Recall between agencies to the class from which laid off.
11. Recall to a class other than one from which laid off.
12. New hire (Employer's discretion).

(Board of Regents, see Appendix M; Community Based Corrections, see Appendix S; Iowa Veterans Home Patient Care, see Appendix W)

I. When a unit, office, or post within an employing unit goes out of existence and the affected employees are not laid off, the Employer and the Union shall meet and attempt to agree upon the procedures for the assignment of affected employees. If the parties fail to agree upon an alternative procedure, the Employer shall offer existing vacancies for which no employee within the employing unit bid to the employees affected by the closure in seniority order. Employees who select a vacancy shall not be subject to the waiting periods established in (B) above for the exercise of transfer rights.

J. This definition shall apply anywhere the terms "special qualifications" or "selective certification requirements" are used in this Agreement. "Special qualifications" and "selective certification requirements" shall consist only of those legal requirements and job related knowledge, skills, abilities, or competencies that are:

1. Appropriate to the job classification of the position;
2. Necessary for successful performance of the essential duties of the position, and;
3. Of a nature and extent that an individual lacking such "special qualifications" could not acquire them and become proficient in them through reasonable orientation or other training of a limited duration. All "special qualifications" and "selective certification requirements" shall be announced in the job posting.

Section 7 Return from Military Service

If required by Uniformed Services Employment and Reemployment Rights Act (USERRA) to allow the returning veteran to assume the position that they would have successfully bid on if not on active military service, or if the veteran returns to the position held prior to active military service and a shift imbalance occurs, the Employer will reassign the least senior employee in the affected classification on the affected shift. Any employee reassigned under this Section will have immediate transfer rights.

RULING: This proposal is a prohibited subject of bargaining except for Section 6 paragraph G (underlined) and the underlined portion of Section 7, which are permissive.

With the exception of the underlined language, this proposal sets forth the eligibility requirements for transfers, the employer's required posting and employee's application for transfers, the criteria for transfer, the actual process and its limitations. As to what was formerly a mandatory subject for everyone, we have held "transfer procedures"

> [e]ncompass methods used to effectuate transfer decisions, including methods as notice and posting, bidding procedures, and the criteria utilized to select employees for transfer, including seniority, qualification, ability, and other factors.

Black Hawk Cnty. & Pub. Prof'l & Maint. Emps., Local 2003, 2006 PERB 7029 at 3. For this reason, the majority of the proposal falls within the subject "transfer procedures," which is now an excluded subject of bargaining for non-public-safety units.

Paragraph G of Section 6, however, does not pertain to transfer procedures, but rather, the employer's right to reassign employees to meet the agency's needs. This provision's predominant characteristic is the assignment of work. In determining the negotiability status of a proposal, we determine whether the proposal fits within the meaning of a narrowly interpreted, definitionally fixed section 20.9 topic. *See Waterloo II,* 740 N.W.2d at 429. As we have previously determined, an assignment proposal is not a matter within the meaning of any section 20.9 topic. *Id.*; *Blackhawk Cnty. & Pub. Prof'l & Maint. Emps.*, 2006 PERB 7218 at 2-3 (management rights clause a permissive subject of bargaining).

Consequently, an assignment proposal is not within the scope of an excluded subject of bargaining and continues to be a permissive subject. Thus, we concluded paragraph G to be a permissive subject of bargaining.

Similarly, Section 7 addresses the employer's right to reassign an employee to accommodate an employee's return from military leave. It, too, is a permissive subject of bargaining except for its last sentence, which refers to an employee's transfer rights if reassigned. This part of the section falls within the excluded subject "transfer procedures."

PROPOSAL 9: Article VIII (Hours of Work)

Section 1 Work Schedules
(This Section shall not apply to employees in the Professional Fiscal & Staff bargaining unit.)
A. Work schedules are defined as an employee's assigned hours, days of the week, days off and shift rotations. Nothing herein shall be construed as a guarantee of the number of hours of work per day or per work week.
B. The Employer shall provide fourteen (14) calendar days written notice to the Union and the affected employees prior to making permanent changes in work schedules. Written notice of the permanent changes in work schedules may be provided to the Union and the affected employees by electronic communication with a read receipt. The fourteen (14) calendar day notice will start on the date of the read receipt. However, employees who work in research laboratories in academic departments of the BOR institutions may have their schedules changed to meet research needs without incurring any overtime obligation until the employee has worked forty (40) hours in a week. Temporary work schedule changes shall not be made for the purpose of avoiding overtime except by voluntary agreement by the employee.
C. Any permanent schedule change made by the Employer that is grieved will not be implemented until Step 2 of the grievance procedure is exhausted. Such grievances shall begin with Step 2 of the grievance procedure.
D. Where practical and feasible as reasonably determined by Management, the employee may elect flexible hours of work including:
a. Variable starting and ending times;
b. Compressed work week such as: 4-ten hour days, or 4-nine hour days and one (1) four hour day;
c. Other mutually agreeable flexible hour concepts, which may include weekend work only. When a request for flextime is denied the written rationale will be provided to the employee within five (5) working days after the date Management receives the request. The term

"Management Rights" will not be used as sole justification for denial of flextime.
(Department of Transportation, see Appendix I; Professional Fiscal & Staff, see Appendix Q; Park Managers, see Appendix P)

Section 2 Overtime

(This section shall not apply to employees in the Professional Fiscal & Staff bargaining unit)

A. Definitions

1. Overtime: Time that an employee works in excess of forty (40) hours per work period. (Airport Firefighters, see Appendix F; Patient Care, see Appendix W)

2. Work Period: A regularly recurring period of one hundred sixty-eight (168) hours in the form of seven (7) consecutive twenty-four (24) hour periods. (Patient Care, see Appendix W)

3. Work Time: The following items will be regarded as hours worked for the purpose of computing overtime pay:

a. Hours worked excluding standby time.
b. Rest periods.
c. Holidays when paid in cash in the week of occurrence.
d. Annual leave.
e. Compensatory leave.
f. Unscheduled holidays.
g. Sick leave when used before forty (40) hours in pay status are accumulated or if prescheduled at least sixteen (16) hours in advance. (Patient Care, see Appendix W)
h. Court appearances as defined in Article X, Section 4.
i. Voting leave as defined in Article X, Section 4.
j. Jury duty leave as defined in Article X, Section 4.
k. Travel between job sites during or after the regular work day.
l. Meal periods of less than thirty (30) minutes where an employee is not relieved of his/her post, station or duty.
m. Wash-up time taken in accordance with Section 5 of this Article. (Department of Transportation, see Appendix I; Iowa Workforce Development, see Appendix T)

B. Overtime Compensation

Overtime shall be compensated at a premium rate of one and one-half (1-1/2) the employee's base hourly pay or actual overtime hours worked, whichever is applicable. Payment shall be made in either cash or compensatory time as follows:

1. The decision to pay overtime in cash or compensatory time rests with the employee; however, the Employer reserves the right to require employees to take cash payment rather than earned compensatory time.

2. Compensatory time can only be accumulated to one hundred sixty (160) hours. Any hours over one hundred sixty (160) will be paid out in cash. The carryover and payment for compensatory time will be as provided in the applicable appendix. (Department of Public Defense, see Appendix G; Department of Administrative Services-General Services Enterprise, see Appendix L; Department of Transportation, see Appendix I; Department of Human Services, see Appendix J; Clerical see Appendix R; Iowa Veterans Home, see Appendix V)

3. A request can be made by the employee for a payout in cash of any accumulated compensatory time. There must be at least a two (2) week notice to the personnel office. The money will be included in the pay check for the pay period during which the request is made.

4. Compensatory time may not be carried over into a new State fiscal year; however, the Employer may designate other than the State's fiscal year for purposes of utilization of compensatory time. For those work units where other than the State's fiscal year is utilized, the Employer will so notify the Union. Compensatory time due an employee at the end of the State's fiscal year, or other designated year where applicable, shall be paid out in cash. (Department of Public Defense, see Appendix G)

5. Compensatory time off shall be granted at the request of the employee with the approval of the Appointing Authority or his/her designee. Compensatory time off shall be granted at the convenience of the employee, whenever possible, consistent with the staffing needs of the agency. (Department of Corrections, see Appendix H; Patient Care Unit, see Appendix W)

C. Scheduling of Overtime

1. The Employer will, as far as practicable, distribute overtime on an equal basis by seniority among those included employees in that classification assigned to the work unit who normally perform the work involved.

2. Overtime opportunities shall be accumulated. Offered overtime not worked shall be considered time worked for purposes of overtime distribution.

3. Upon request, the Union may review overtime equalization records. (Department of Transportation, see Appendix I)

D. Pyramiding Prohibited

Payment of overtime at a premium rate shall not be compounded or paid in addition to any other premium rate paid for work incurred during the same work period. There shall be no duplication or pyramiding of any premium pay provided for under the provisions of this Agreement for the same hours worked. Holidays which fall on an employee's regularly scheduled work day will be counted for the purpose of computing overtime eligibility. Holidays which fall on an employee's regularly scheduled day off will be paid at the employee's regular straight time rate and shall not be counted for the purpose of computing overtime eligibility.

E. Employees Returning From Leaves of Absence

New employees or employees returning from a leave of absence shall be credited with the average number of overtime hours worked by employees within the work unit.

Section 3 Meal Periods

A. All employees shall be granted an unpaid meal period of at least thirty (30) minutes in duration or, at the Employer's discretion, a paid meal period in those situations where qualified relief is not available. Where practicable, the Employer will attempt to schedule the meal period at approximately the middle of each shift.

B. During overtime work hours, the Employer shall schedule such additional unpaid meal periods as are reasonable.

(Security Unit, see Appendix O; Clerical Unit, see Appendix R; Professional Fiscal & Staff Unit, see Appendix Q; Department of Corrections, see Appendix H)

Section 4 Rest Periods

A. All employees shall be granted a fifteen (15) minute rest period during each one-half (1/2) shift provided qualified relief is available. The rest period shall be scheduled at approximately the middle of each one-half (1/2) shift.

B. Employees who work at least one (1) hour beyond their regularly scheduled shift shall receive a fifteen (15) minute rest period within the limitations set forth above.
C. Drivers and Transport Drivers shall receive a thirty (30) minute rest period after twelve (12) hours of work.
(Clerical Unit, see Appendix R; Professional Fiscal & Staff Unit, see Appendix Q)

Section 5 Wash-Up Time

Employees shall receive reasonable and adequate wash-up time consistent with available facilities immediately prior to the end of the shift. The Employer shall determine those positions which shall qualify for wash-up time; however, the Union reserves the right to grieve the unreasonable denial of such wash-up time.

Section 6 Shift Differential

A. The Employer agrees to pay, in addition to the employee's regular hourly rate, a shift differential of fifty cents ($0.50) per hour for any regularly scheduled permanent shift of which four (4) or more hours occur between 6:00 p.m. and midnight, and a shift differential of fifty-five cents ($0.55) per hour for any regularly scheduled permanent shift of which four (4) or more hours occur between midnight and 6:00 a.m. Employees who work rotating shifts on a regularly scheduled permanent basis shall be eligible for shift differential.

Effective July 1, 2010, the Employer agrees to pay, in addition to the employee's regular hourly rate, a shift differential of sixty cents ($0.60) per hour for any regularly scheduled permanent shift of which four (4) or more hours occur between 6:00 p.m. and midnight, and a shift differential of sixty-five cents ($0.65) per hour for any regularly scheduled permanent shift of which four (4) or more hours occur between midnight and 6:00 a.m. Employees who work rotating shifts on a regularly scheduled permanent basis shall be eligible for shift differential.
B. Employees shall not be eligible for shift differential pursuant to this Section as a result of an extension of their regular work day into a shift differential period. For purposes of this Section, a regularly scheduled permanent shift is defined as those situations where an employee is assigned to the same shift for a period of time in excess of two (2) weeks [fourteen (14) calendar days]. Employees entitled to shift differential shall receive the applicable shift differential for all hours worked.
(Natural Resources Technician 1 #05301, Natural Resources Technician 2 #05331, and Park Manager #05335, see Appendix P)

Section 7 Standby

The Employer will specifically designate those employees in writing who are to be in standby status. An employee who is in standby status is responsible for keeping the Employer aware of his/her whereabouts and shall be immediately accessible by telephone or beeper. The Employer may establish reasonable reporting procedures for the implementation of this Section. An employee in standby status shall receive ten percent (10%) of his/her normal hourly rate for each hour in said status. Time spent actually working shall not be counted in determining hours spent in standby status for compensation purposes.
(Natural Resources Technician 1 #05301, Natural Resources Technician 2 #05331, and Park Manager #05335, see Appendix P)

Section 8 Call-Back Time

A. The Employer agrees that an employee called back for duty or called in on the employee's day off will be guaranteed a minimum of three (3) hours

at the appropriate rate of pay. This provision shall not be construed so as to provide for additional compensation if the employee is recalled back for duty within the original three (3) hour period, except that an employee who is called back to work in excess of three (3) hours will be paid for actual time worked. To qualify for call-back compensation, the time worked cannot be contiguous to the beginning or end of an employee's scheduled work shift.

B. The provisions of Section 8(A) are not applicable to employees prescheduled for duty at least forty-eight (48) hours in advance.

(Natural Resources Technician 1 #05301, Natural Resources Technician 2 #05331, and Park Manager #05335, see Appendix P)

Section 9 Travel Between Work Sites

Employees who are required by the Employer to report to a work site for the purpose of picking up tools, equipment and/or uniforms, and who subsequently travel to a second work site, shall be in pay status for time spent in traveling between work sites.

Section 11 Volunteer Firefighters

A. Employees who participate as volunteer firefighters at their work site shall be compensated with an additional ten dollars ($10) each pay period.

B. The Employer shall not prorate this compensation during any leave of absence without pay of less than five (5) days in duration.

Section 12 Med Passer Differential

Department of Human Services, see Appendix J; Iowa Veterans Home, see Appendix V; Department of Corrections, see Appendix H; and Community Based Corrections, for allotment of medications, see Appendix S.

RULING: This proposal is a permissive subject of bargaining.

We determined the entirety of Proposal 9, Article VIII (Hours of Work), falls within several different permissive subjects of bargaining. We have consistently held the section 20.9 subject, "hours of work," to be the total number of hours of a workday, the starting and quitting times, and break times as well as notice to employees of their hours. *See Cedar Rapids Airport Comm'n & Int'l Ass'n of Prof. Firefighters, Local 2607*, 2013 PERB 8645 at 9, *aff'd Int'l of Prof'l Fire Fighters v. Iowa Pub. Emp't Rel. Bd.*, 2013 WL 7808739 (Polk Cnty. Dist. Ct. 06/17/2013). Accordingly, we determined Sections 1, 3, 4, and 5 setting forth work schedules, meal periods, rest periods, and wash-up time are a permissive subject of bargaining as "hours."

Section 2 of the proposal on its face definitionally fits within the section 20.9 subject of "overtime compensation" albeit now a permissive subject for non-public-safety units. The provision defines the eligible and excluded hours, the amount of compensation, the payment, and those eligible. The one exception is the AFSCME's review of records, which does not fall within the subject given a narrow and restrictive interpretation of overtime compensation. Nonetheless, it is still a permissive subject of bargaining.

In Section 6, the State agrees to pay increased rates of pay for employees who work specified shifts. We have previously determined "shift differentials" to address employee entitlement to differing compensation based upon the employee's shift assignment. *Black Hawk Cnty. & Pub. Prof. & Maint. Emps., Local 2003*, 2006 PERB 7219 at 7-8. Section 6 falls within the topic "shift differentials," which is now a permissive subject of bargaining because it is neither a mandatory subject nor excluded subject for non-public-safety units.

The State asserts Section 7, Standby; Section 8, Call-Back Time; Section 11 Volunteer Firefighters; and Section 12, Med Passer Differential are excluded as supplemental pay. However, we determined these provisions to be a permissive subject of bargaining. Each requires compensation for services rendered—whether meeting restrictions on off-duty time to be on standby or being called back to service or providing firefighting duties or the dispensing of meds. Although the provisions do not fall within the meaning of "base wages," the required compensation falls within the permissive subject of "wages," because it requires a payment, in kind or cash, in return for services rendered

by an employee. *See, e.g., Greene Cnty. Cmty. Sch. Dist. & Construction and Pub. Ees. LiUna Local 177*, 2017 PERB 100828 at 10 (*Greene Cnty.).* (Board distinguished "wages" as payment in return for labor or services).

Because these portions of the proposal fall within the subject "wages," we reject the State's assertion that they are "supplemental pay." While the proposals (1) require a payment of money or other thing of value and (2) are related to the employment relationship, the required payments do not fulfill the third element: (3) the payments are not in addition to compensation received pursuant to any other permitted subject specified in section 20.9. "Wages" is not an excluded subject of bargaining for non-public-safety units and is thus a "permitted" subject within the meaning of section 20.3(12) definition of "supplemental pay." *See Columbus*, 2017 PERB 100820 at 6-7. As we stated in *Columbus*,

> [twelve] of the specified mandatory subjects for public-safety units—wages, hours, vacations, holidays, leaves of absence, shift differentials, overtime compensation, seniority, job classifications, health and safety matters, in-service training and grievance procedures—are not excluded from bargaining for non-public-safety units. The public employers and representatives of those units are thus permitted to bargain over them, as well as over base wages.
>
> Accordingly, compensation which falls within the meaning of any of these 12 subjects, or within the meaning of "base wages," is not supplemental pay by definition because such compensation is received pursuant to a permitted subject of bargaining specified in section 20.9.

Id. at 7. Thus, these four sections are a permissive subject of bargaining as "wages." For the same reason, Section 9 constitutes "wages" for employees traveling between work sites. However, the first three sentences of Section 7 that

set out the employer's designation of employees on standby, standby requirements, and reporting procedures are not a part of "wages," but nonetheless, are permissive subjects of bargaining.

PROPOSAL 10: Article IX (Wages and Fringe Benefits)

Section 1 Wages

A. On the first day of the pay period that includes July 1, 2017....

All employees eligible for negotiated within-range step increases shall receive automatic step increases in accordance with their eligibility date and the new rate of pay shall start on the first day of the pay period in which the employee's eligibility date occurs. The current procedure used in Regents will continue as it currently exists. The step increases shall be automatic four and one-half percent (4.5%) within-grade increases in accordance with their eligibility date.

B. On the first day of the pay period that includes July 1, 2018....

All employees eligible for negotiated within-range step increases shall receive automatic step increases in accordance with their eligibility date and the new rate of pay shall start on the first day of the pay period in which the employee's eligibility date occurs. The current procedure used in Regents will continue as it currently exists. The step increases shall be automatic four and one-half percent (4.5%) within-grade increases in accordance with their eligibility date.

C. All Regents employees eligible for negotiated within-range increases shall receive an automatic within-grade increase of four and one-half percent (4.5%) in accordance with their eligibility date. In addition, employees who are promoted, demoted, reclassified, assigned special duties, or lead workers will have their pay set based upon the administrative rules of the Regent Merit System with the value of a step equal to four and one-half percent (4.5%).

D. All DOT employees in the bargaining unit who are currently receiving longevity payments shall continue to receive such payments in accordance with their current longevity step and rate. However, such longevity payment shall be frozen at the current longevity step for all DOT employees and no additional increases shall be granted to any employee except employees in the Clerical bargaining unit and those employees in the Professional Fiscal & Staff bargaining unit who were designated "104U" or "004U" prior to January 1989. All DOT employees in the bargaining unit who are currently receiving longevity payments shall continue to receive such payments in accordance with the established longevity step and rate. Employees not currently receiving longevity payments shall not be eligible for such payments.

E. All employees in classifications recommended for a pay grade increase who are currently paid above the minimum of the class shall be placed at the same percent above the minimum of the new pay grade as the employee was receiving within the prior pay grade.

F. No person brought into an AFSCME bargaining unit by stipulation by the parties, action by PERB, or by operation of law shall suffer any loss of

salary or salary potential as a result of inclusion in the AFSCME bargaining unit.

Section 2 Deferred Compensation

For employees who are eligible for Internal Revenue Code Section 457 Deferred Compensation, the Employer shall match contributions one dollar ($1.00) for each one dollar ($1.00) contributed by the employee up to a maximum of seventy-five dollars ($75.00) per month.

Section 3 Selected IRS Pre-Tax Benefits

A. The State will offer a premium conversion plan in which employees may elect, during a designated annual enrollment period, to pay their share of the health, dental and life insurance premiums with pre-tax rather than post-tax salary dollars.

B. The State will provide a program consistent with Internal Revenue Code, Section 129 regulations through which employees may elect to make a pre-tax reduction in wages which will be paid to an account from which allowable dependent care expenses will be reimbursed.

C. The State will provide a program consistent with Internal Revenue Code Section 125 regulations through which employees may elect to make a pre-tax reduction in wages which will be paid to an account from which allowable medical expenses will be reimbursed.

D. If an employee share of the health insurance surplus fund becomes available, the Employer agrees that the Union will determine the utilization of the employee share of the surplus in outlying years, subject to the limitations set by the various federal agencies regarding the use of such funds. These funds will be allocated on a plan year basis.

RULING: This proposal is a permissive subject of bargaining.

Proposal 10, Article IX (Wages and Fringe Benefits), consists of permissible subjects of bargaining. Section 1, paragraphs A through D, requires the employer to pay employee step, longevity, within pay grade or new pay grade increases in accordance with the provisions. Automatic wage increases based on employees' additional years of service do not fall within the narrow topic of "base wages" as we have defined it, but are within the scope of the permissive subject "wages." *Oskaloosa*, 2017 PERB 100823 at 6. Paragraph E addresses step placement when moved to a different paygrade and, as such, is a permissive subject of bargaining as "wages." Paragraph F merely red-circles an employee's pay who comes into the bargaining unit so that it does not result in a salary reduction. It is also a permissive subject of bargaining as "wages."