IN THE SUPREME COURT OF IOWA

NO. 18-0018

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 199

Plaintiff-Appellant,
vs.

STATE OF IOWA, IOWA BOARD OF REGENTS,

Defendants-Appellees.

APPEAL FROM THE IOWA DISTRICT COURT
IN AND FOR POLK COUNTY,
THE HONORABLE JEFFREY D. FARRELL

PLAINTIFF-APPELLANT'S FINAL REPLY BRIEF and REQUEST FOR ORAL SUBMISSION

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I. A PUBLIC SECTOR COLLECTIVE BARGAINING AGREEMENT IN IOWA RESULTS FROM OFFER, ACCEPTANCE, AND RATIFICATION BY THE EMPLOYEE ORGANIZATION.

A. The Statutory Requirement.

The Regents, through email, on January 10th, presented a preapproved final offer for a collective bargaining agreement to SEIU. (App. 119-132). SEIU accepted the final offer for a complete collective bargaining agreement on January 25, 2017. (App. 136). The members of SEIU then ratified the agreement on February 7, 2017 (App. 135, 142). Ratification following offer and acceptance results in a collective agreement under Iowa Code Section 20.17(4):

> The terms of a proposed collective bargaining agreement shall be made available to the public by the public employer and reasonable notice shall be given to the public employees by the employee organization prior to a ratification election. **The collective bargaining agreement shall become effective only if ratified by a majority of those voting by secret ballot.**

The legislature could have stated in Iowa Code Section 20.17(4): The collective bargaining agreement shall become effective only if ratified by a majority of those voting by secret ballot *and thereafter if approved by the governing body of the public employer.* The legislature did not set forth such

an additional requirement for collective bargaining and therefore, there is a binding collective bargaining agreement between SEIU and the Regents.

B. PERB may not by rule add an additional requirement for collective bargaining formation not found in statute.

The determining issue in this case is whether or not PERB, may, by rule, create an additional requirement for collective bargaining agreement formation. The Regents made a "final offer" for a complete "collective bargaining agreement" on January 10, 2017 and sent the offer by email to SEIU (App. 121-132). The District Court, in deying the Defendant's Motion to Dismiss, stated the only issue was

> "If the Board met and approved that offer before it was made, the agreement would be binding as proposed and accepted. However, if the Board did not meet and approve the contract, either before it was proposed or after it was accepted, then the Board is not bound by the contract."

(App. 67).

The District Court concluded on summary judgment, relying on PERB Rule 6.5(3) that "[b]ecause the Board of Regents did not approve the tentative agreement there is no executed contract." (App. 221).

PERB Rule 6.5(3) states:

> *Acceptance or rejection by public employer*: The public employer shall, within ten days of the tentative agreement, likewise meet to accept or reject the agreement, and shall within 24 hours of the acceptance or rejection serve notice on the employee organization of its acceptance or rejection of the

> proposed agreement; however, the public employer shall not be required to either accept or reject the tentative agreement if it has been rejected by the employee organization.

PERB, may by administrative rules, and pursuant to Iowa Code Section 20.6, enact rules to *implement* the provisions of the statute. PERB, however, cannot by rule *add* or *expand* the statutory requirements for contract formation. If the administrative rule does so, said rule is invalid.

Most recently, the Iowa Supreme Court in *City of Des Moines vs. Iowa Department of Transportation*, WL 1980476 (Iowa 2018), discussed the rule making authority of administrative agencies and cited and discussed a plethora of cases in finding that the administrative agency did not have the statutory authority to promulgate administrative rules regulating automated traffic enforcement (ATE) systems located along primary roads. *Id*. at 1. In the discussion, the Court agreed that "[o]rdinarily, state agency rules are given the "the force and effect of law." *Id*. at 8. *Citing Stone Container Corp. v. Castle*, 657 N.W.2d 485, 489 (Iowa 2003) (quoting *Greenwood Manor v. Iowa Dep't of Pub. Health*, 641 N.W.2d 823, 835 (Iowa 2002)). However, "agencies have 'no inherent power and [have] only such authority as [they are] conferred by statute or is necessarily inferred from the power expressly given.'" *Wallace v. Iowa State Bd. of Educ.*, 770 N.W.2d 344, 348 (Iowa 2009) (alterations in original) (quoting *Zomer v. W. River Farms, Inc.*,

666 N.W.2d 130, 132 (Iowa 2003)). For a rule to be validly adopted, it "must be within the scope of the powers delegated to [the agency] by statute." *Id.* (quoting *Iowa Power & Light Co. v. Iowa State Commerce Comm'n*, 410 N.W.2d 236, 239 (Iowa 1987)). Thus, if the rules adopted by the agency "exceed the agency's statutory authority, the rules are void and invalid." *Id.* "An agency cannot by rule ... expand or limit authority granted by statute." *Smith–Porter v. Iowa Dep't of Human Servs*., 590 N.W.2d 541, 545 (Iowa 1999).

Here, PERB has exceeded its statutory authority with regard to the creation of rule 6.5(3), which adds the additional step for contract formation, not found in the statute. Therefore, rule 6.5(3) is void. PERB cannot expand upon its limited authority granted by Iowa Code Chapter 20 to "implement" the law through administrative rule. The only requirement outlined in Iowa Code Section 20.17(4) to create a binding collective bargaining agreement between an employee organization and public employer following offer and acceptance is the requirement that the employee organization ratify the collective bargaining agreement by a majority of those voting.

The Regents cite a pleothera of pre-Public Employment Relation Board cases to support the notion that "The Regents have the Right and Obligation To Approve Tentative Agreement Before There Can Be A Valid Enforceable

CBA." (Regents br. at 20). The Iowa Public Employment Relations Board was created in 1974 to administer Iowa Code Chapter 20, Public Employment Relations (Collective Bargaining). Iowa Code 20.6(1). The Regents rely on *State Board of Regents v. United Packing House Food and Allied Workers, Local No. 1258* a 1970 case for the notion that any collective bargaining agreement terms ratified by the public employee organization needs to be "adopted by the Regents in a proper legislative manner" and that" [s]uch action does not involve an improper delegation of legislative powers to private persons as there is no compulsion to sign an agreement and the final decision remains in the Board of Regents." (Regents br. at 21). The Regents also rely on *Service Employees Int'l, Local No. 55 v. Cedar Rapids Comm. Sch. District*, 222 N.W.2d 403 (Iowa 1974), another case pre-PERB. The Regents use this case for the notion that SEIU "was well-aware the Regents retained complete authority to reject recommendations made by its representatives." (Regents Br. at 22).

The Regents' reliance on these cases is flawed. An "old law remains in full force until the new law takes effect." *Guthrie County Bd. of Sup'rs v. Frevert-Ramsey-Kobes, Architects-Engineers, Inc.*, 431 N.W.2d 768, 769 (Iowa 1988) *citing Butters v. City of Des Moines*, 209 N.W. 401 (Iowa 1926). When the legislature created and passed Iowa Code Chapter 20 in 1974, this

law created a new procedure for contract formation between public employees and employers in Iowa.

In looking at the *Hines v. Illinois Central Gulf R.R.* case cited by the Regents:

> Another applicable rule of construction requires a showing of intention to remedy an existing status by a clear expression or implication: "[A] statute will not be presumed to overturn long-established legal principles, unless that intention is clearly expressed or the implication to that effect is inescapable." The statute will be construed so as not to overturn long-established principles of law "unless an intention to do so plainly appears by express declaration or necessary or unmistakable implication, and the language employed meets of no other reasonable construction."

330 N.W.2d 284, 289 (Iowa 1983) (quoting *Wilson v. Iowa City*, 165 N.W.2d 813, 822 (Iowa 1969); *see also* 50 Am.Jur. Statutes § 340 (internal citations omitted).

To find the intent of the legislature, Iowa Courts look "first and foremost to the language it chose in creating the act." *In Re Detention of Swanson*, 668 N.W.2d 570, 574 (Iowa 2003). Courts will "read the statute as a whole and give it its plain and obvious meaning, a sensible and logical construction, which does not create an impractical or absurd result." *Id.* (citation and internal quotation marks omitted). "If more than one statute relating to the subject matter at issue is relevant to the inquiry, we consider all the statutes together in an effort to harmonize them." *Kolzow v. State,* 813

N.W.2d 731, 736 (Iowa 2012) (quoting *State v. Carpenter,* 616 N.W.2d 540, 542 (Iowa 2000)).

The legislature enacted Iowa Code Chapter 20 to allow for formal collective bargaining, including specific statutory requirements for contract formation. A plain reading of Iowa Code Chapter 20 establishes that the legislature only provided for ratification by the employee organization to create a binding collective bargaining agreement. The Court may only search for what the legislature did through the statutory provision not what the legislature could or should have done. See *In Re Detention of Swanson*, 668 N.W.2d 570, 574 (Iowa 2003); *Kolzow,* 813 N.W.2d 736 (quoting *State v. Carpenter,* 616 N.W.2d 540, 542 (Iowa 2000)).

The Regents argue that PERB's rule must be valid because it has been applied in other cases. This argument is without merit due to the fact this is the first case in which the administrative rule has been challenged.

The Regents also rely on *Moravia Community Sch. Dist. v. Moravia Educ. Ass'n*, 460 N.W.2d 172, 177 (Iowa Ct. App. 1990) for the proposition that PERB Rule 6.5(3) "has withstood the test of time" and is therefore applicable. In *Moravia Community Sch. Dist.*, the parties did not reach a voluntary agreement and utilized interest arbitration. *Id.* at 174-76. The Court found that the statute delegated legislative authority through PERB to the

arbitrator. *Id.* at 178. Thus, if one party disagreed with the decision of the interest arbitrator, the party was disagreeing with final agency action and had to utilize procedures under Iowa Code 17A. *Id.* at 176. The Iowa Supreme Court implicitly rejected *Moravia Community School District*, although on other grounds, and found that Iowa Code 20.17(5) was the appropriate means to enforce a collective bargaining agreement and there was no need to utilize administrative measures. *AFSCME/Iowa Council 61 v. State of Iowa*, 484 N.W.2d 390, 392-395 (Iowa 1992).

Thus, using *Moravia* as a means to challenge "an interest arbitration" was rejected in *AFSCME* and as a means to challenge a grievance arbitration award was never accepted by the Court, therefore it has no applicability here, where there is a voluntary agreement between the parties. *See also Sergeant Bluff Luton Education Association v. Sergeant Bluff Luton Community School District*, 282 N.W.2d 144 (Iowa 1979).

II. THE REGENTS ARE BOUND BY THEIR OWN OFFER OF JANUARY 10 FOLLOWING ACCEPTANCE AND RATIFICATION BY THE EMPLOYEE ORGANIZATION.

The Regents admit that their offer of January 10, 2017 was accepted and ratified by SEIU. The Regents attempt to avoid the natural result of the sequence of events – that there is a collective bargaining agreement by claiming that their representative could not bind the Board. The

representative, however, did not bind the Regents. The Regents themselves, not the representative, decided on the terms of their self-described "final offer" and then communicated those terms by email to SEIU. (App. 121-132). The representative was at best merely a conduit of the Regents offer.

The Regents initially selected Michael Galloway as their representative pursuant to Iowa Code Sections 20.17(2), 20.17(9) rather than directly conducting negotiations with SEIU (App. 140), therefore, precluding SEIU from meeting directly with the Regents pursuant to Iowa Code Section 20.10(3)(j).

The representative, however, in communication prior to January 10th makes it clear that the offer to be presented on January 10th is solely that of the Regents. The case may have been different if the Regents representative, Michael Galloway, on his own, had presented a proposal to SEIU that he thought his client might take. For example, "if I could get my client to three (3) percent would we have an agreement? Then, Galloway's after the fact claim that he told SEIU representatives that he would have to "sell" any proposal to the Regents would have merit. As the offer here was that of the Regents, not the representative, the alleged statement, if even true, has no bearing on the outcome of the instant case. (App. 157).

The Regents representative on January 9, 2017 informed SEIU that a

"final offer" will be forthcoming from the Regents. (App. 119). On January 10, 2017 the representative merely attached a cover letter stating, "Please find attached the Board of Regents final offer to SEIU." (App. 120).

Clearly then the offer of January 10th is that of the Regents, as opposed to the representative making "a supposal" during the course of negotiation that he thinks his client may accept.

The Regents proposal of January 10th was for a complete two-year collective bargaining agreement consisting of twenty-five articles (App. 121-132). Thus, the Regent's proposal of January 10th was not a partial proposal relating just to economic issues such as wages, but as to each and every item the Regents proposed to be contained in the collective bargaining agreement. Thus, the offer was not limited simply by economic items related to "financial authority" but was a full and complete agreement which upon acceptance and ratification would result in a contract. The representative on behalf of the Regents let SEIU know as much, "If it is not acceptable, then we should just schedule mediation. Thanks." (App. 119).

The Regents take issue with SEIU's reliance on *Frontier Leasing Corp v. Links Engineering, LLC,* a private sector case. This is interesting based on the fact SEIU also cites *Dillon v. City of Davenport,* a *public sector* case, for the same proposition.

In *Dillon*, the Iowa Supreme Court found that a "fundamental principle of agency law is that whatever an agent does, within the scope of his actual authority, binds his principal." *Dillon*, 366 N.W.2d 918, 924 (Iowa 1985) citing *Grismore v. Consolidated Products Co.,* 335, 5 N.W.2d 646, 651 (1942); 3 Am.Jur.2d *Agency* § 261 (1962); *see* Restatement (Second) of Agency §§ 144, 145 (1958). The *Dillon* Court explained further that "[a]ctual authority to act is created when a principal intentionally confers authority on the agent either by writing or through other conduct which, reasonably interpreted, allows the agent to believe that he has the power to act." *Dillon*, 366 N.W.2d at 924; *See also* Restatement (Second) of *Agency* § 26; 3 Am.Jur.2d *Agency* § 69. The *Dillon* Court summed up actual and implied authority in finding that "[a]ctual authority includes both express and implied authority. *Dillon*, 366 N.W.2d at 924; See also *Newberry v. Barth, Inc.,* 252 N.W.2d 711, 714 (Iowa 1977); *Grismore*, 5 N.W.2d at 651. "Express authority is derived from specific instructions by the principal in setting out duties." *Dillon*, 366 N.W.2d at 924 ."[W]hile implied authority is actual authority circumstantially proved." *Dillon*, 366 N.W.2d at 924 *Grismore*, 5 N.W.2d at 651.

Further, the case cited by the Regents for a claim of limitation on the representative's authority are not relevant here. Thus, while SEIU will briefly

respond to the case cited, the case only deals in circumstances where the agent attempts to bind the agent's representations or cases where there is a question about the agents ability to bind the principle (employer). In the instant case, the Regents determined their own final offer as to contract terms and merely used the representative as a conduit to communicate that offer through email to SEIU.

The Regents rely on *City of McGregor v. Janett* for the proposition that acts by their exclusive bargaining representative cannot bind the Regents because the Regents have the final approval power. (Regents br. p. 33). In looking at the ruling in *City of McGregor*:

> A city council exercises power "only by the passage of a motion, a resolution, an amendment, or an ordinance." This court has long held that acts by individual members of a public body, even when concurred in by the majority, cannot bind the municipality **unless officially sanctioned in accordance with the statute.** Moreover, citizens dealing with city officers must, at their peril, understand the limits upon a city's power. Because the validity of dealings with a municipality can be measured by reference to public documents and proceedings, the doctrine of ultra vires has enjoyed stricter application in the public, as opposed to the private, corporate realm.

City of McGregor v. Janett, 546 N.W.2d 616, 620 (Iowa 1996) (citations omitted).

Here, the actions by the Regents were specifically sanctioned in accordance with Iowa Code Chapter 20. As previously stated, the Regents

selected to partake in Chapter 20 bargaining with SEIU using an exclusive bargaining representative pursuant to Iowa Code Section 20.17(2) and the actions of their representative were specifically sanctioned under Iowa Code 20.17(9). The Regents choice to use a bargaining representative is the same as if the Regents had actually sat down with SEIU to bargain at the table, there is no difference.

Therefore, the Regents' argument that they are still required to approve any final collective bargaining agreement is invalid as the actions of the Regents binds the party as said actions are sanctioned under Iowa Code Chapter 20.

The Regents claim that SEIU made a counter offer or that the Regents withdrew their offer prior to ratification. This argument was heard and was rejected by the District Court and for the same reasons found by the District Court should be rejected here:

> The Board made additional arguments, including that the union could not ratify the January 10, 2017 offer because it had made a counteroffer, and because the Board withdrew the January 10, 2017 offer before the union ratified it. Neither is supported by the undisputed evidence. The evidence only shows that SEIU asked whether the Board might consider changes to two contract terms. No counteroffer was made because SEIU did not propose a substituted offer. *See Washington v. State*, 697 N.W.2d 127, n. 3 (Iowa App. 2005) (Table); Restatement (Second) of Contracts, § 39(1).1 The Board did inform SEIU on January 31, 2017, that there was no agreement, but it did not expressly withdraw the offer. *See e.g. Pepsi-Cola*, 659 F.2d at 90-91 (requiring an

> express withdrawal of a prior offer). Therefore, the Board representative did not withdraw the January 10, 2017 offer prior to the union ratifying it.

(App. 221).

The District Court's conclusion is supported by the law applicable to collective bargaining agreements as well as Iowa's general contract law.

The Iowa Supreme Court has looked to and adopted federal case law principles in the *interpretation* of collective bargaining agreements given that the duty to bargain in good faith provisions under federal and Iowa law are nearly identical.

Principles adopted by this Court in *Sergeant Bluff Luton Education Association v. Sergeant Bluff Luton Community School District*, 282 N.W.2d 144 (Iowa 1979) in a case seeking to enforce a grievance arbitrator's award are near identical and in fact, many of the same cases are cited as to the *formation* of employment contracts in *Pepsi Cola Bottling Company of Mason City Iowa v. National Labor Relations Board*, 659 F.2d 87 (8th Circuit 1981).

The facts in this case establish that on January 17, 2017, subsequent to the Regents final offer of January 10th, the SEIU representative called the Regents representative (App.133-134, 141, 212, 221) and inquired as to whether better terms were available as to only the Weekend Option Program for nurses and a probationary period of new employees. (App. 141, 212-213,

221). The SEIU representative, however, did not reject the Regents offer of January 10th, nor make a counter proposal (App. 133-134, 212-213, 221). The Regents representative on January 18th responded to the SEIU representative stating that terms different from the January 10th were not available. (App. 135).

On January 25, 2017 the SEIU representative in writing accepted the Regents final offer, "sent by email on January 10, 2017." (App 136).

On January 31, 2017 the Regents representative, in a oral conversation with SEIU representative, stated that he did not believe the parties had reach an agreement but never withdrew the Regents offer of January 10th. (App. 142, 144, 212-213, 221).

On February 8, 2017 the SEIU representative sent an email to the Regents through their representative stating, "SEIU, Local 199 ratified the tentative agreement with a vote on February 7, 2017." (App 142, 145).

The Eighth Circuit and the Pepsi Cola decision makes clear that:

> "A contract offer is not automatically terminated by the other party's rejection or counter proposal, but may be accepted within a reasonable time unless it was expressly withdrawn prior to acceptance, was expressly made contingent upon some condition subsequent, or was subject to intervening circumstances which made it unfair to hold the offeror to its bargain."

Pepsi-Cola, 659 F.2d 88.

Iowa state law cases make clear that there was no counter offer in the instant case because there was no "substituted bargain differing from that proposed by the original offer," *Washington v. State*, 697 N.W.2d 127, n. 3 (Iowa App. 2005) and that "a mere 'inquiry' about different or better terms does not necessarily amount to a counteroffer." *Great Lakes Comm. Corp. v. AT&T Corp.*, 124 F. Supp. 3d. 824, 849–51(N.D. Iowa 2005).

Therefore, there is a binding collective bargaining agreement in place between the parties.

III. IF THE PERB RULE IS ENFORCEABLE, THE REGENTS INACTION RESULTS IN AN ENFORCEABLE COLLECTIVE BARGAINING AGREEMENT BETWEEN THE PARTIES.

If the Court concludes that PERB can add an additional requirement for collective bargaining agreement formation by rule, then it is clear that the Regents did not comply with the rule.

The Regents affirmatively state that they did not hold a meeting within ten days of ratification by the employee organization to accept or reject the collective bargaining agreement. (App. 86). The failure to do so results in a collective bargaining agreement. To hold otherwise would allow an employer to escape its obligations under contract by refusing to meet to accept or reject on agreement they wanted to, thus nullifying all the provisions of Iowa Code Chapter 20. SEIU informed the Regents that they accepted their January 10,

2017 offer on January 25, 2017. (App. 141).

The Regents now, for the first time, try and raise that SEIU did not ratify the agreement within ten (10) days of acceptance. The fact is, SEIU tried to book a room with the Regents multiple times during the 13-14 day span but requests went un-responded to. (App. 141-142). This delay in ratification is not at the fault of SEIU and further was never raised by the Regents as a grounds on which to claim that no collective bargaining agreement existed.

Therefore, based on the inaction of the Regents, if the PERB rule does apply, a collective bargaining agreement is still in place between the parties.

IV. THE PROPER ACTION REGARDING ENFORCEMENT OF A COLLECTIVE BARGAINING AGREEMENT IS THROUGH IOWA CODE SECTION 20.17(5), NOT A PROHIBITED PRACTICE COMPLAINT WITH PERB.

The Regents' thought process regarding the filing of a prohibited practice complaint with PERB because of the Regents failure in negotiating in good faith and failing to ratify the agreement in time is meritless. The District Court rejected this argument on ruling against the Regents on their motion to dismiss finding that this matter "will not prevent PERB from exercising its responsibilities in other areas within its span of supervision. The issue whether the parties have entered into a contract is within the authority in section 20.17(5) to be decided by the court." (App. 65).

PERB cannot provide the type or remedy SEIU is requesting her

because that remedy is exclusively found and granted under Iowa Code Section 20.17(5). Iowa Code Section 20.17(5) outlines the "[t]erms of any collective bargaining agreement may be enforced by a civil action in the district court of the county in which the agreement was made upon the initiative of either party."

With that in mind, Iowa Appellate Courts have recognized that if "the agency is incapable of granting the relief sought during the subsequent administrative proceedings, a fruitless pursuit of these remedies is not required." *Salsbury v. Iowa Department of Environmental Quality*, 276 N.W.2d 830, 836 (Iowa 1979); *Matters v. City of Ames*, 219 N.W.2d 718, 719 (Iowa 1974); 3 K. Davis, *Administrative Law* § 20.07 (1958).

Here, PERB does not have the power to grant the relief sought by SEIU in this action. PERB's very limited remedial power is set forth in Iowa Code 20.11(4),

> "If the board finds that the party accused has committed a prohibited practice, the board, may within 30 days of its decision, enter into a consent order with the party to discontinue the practice or after the 30 days following the decision may petition the district court for injunctive relief pursuant to the rules of civil procedure."

See Chauffeurs, Teamsters and Helpers, Local Union No. 238 vs. Fayette County, No. PERB 5673, 1998 WL 35275874 (Jan. 20, 1998) (finding that the County violated its good faith statutory duty to bargain and forcing the County

and Union to bargain a collective bargaining agreement as required by law); *see also General Drivers & Helpers' Union, Local 421 v. City of Epworth*, No. PERB 4826, 1993 WL 13651448 (Oct. 18, 1993) (finding that the City of Epworth had partaken in bad-faith bargaining and proper remedy was to order "the City of Epworth shall cease and desist from any continuing or future interference with, restraint or coercion of public employees in the exercise of rights granted by the Public Employment Relations Act."). In this case, there is offer, acceptance and ratification, thus creating an enforceable collective bargaining agreement.

Since "PERB cannot provide an adequate remedy for the issues raised by plaintiffs" SEIU is correct in going to court and enforcing the agreement. *See Sioux City Police Officers' Ass'n v. City of Sioux City*, 495 N.W.2d 687, 693 (Iowa 1993).

Therefore, based on the fact that PERB cannot provide an adequate administrative remedy and Iowa Code Chapter 20 specifically outlines the requirement that the" terms of any collective bargaining agreement may be enforced by a civil action in the district court," it is meritless to think that the proper avenue for SEIU to pursue due to the Regents' failure to hold a ratification election would be to file a prohibited practice complaint with PERB.

CONCLUSION

The District Court erred in finding that there was not a valid and binding collective bargaining agreement between SEIU and the Regents. The decision of the District Court should be reversed and remanded.

ORAL ARGUMENT NOTICE

Counsel requests to submit this case with oral argument.

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CERTIFICATES OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because it contains 4,454 (less than 7,000 words), excluding the parts of the brief exempted by Rule 6.903(1)(g)(1), which are the table of contents, table of authorities, statement of the issues, and certificates.

This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2016 in font size 14, Times New Roman.

/s/ *Charles Gribble*
Dated: June 6, 2018
Charles Gribble

CERTIFICATES OF FILING AND SERVICE

I hereby certify that I e-filed the Plaintiff-Appellant's Final Reply Brief with the Electronic Document Management System with the Iowa Judicial Branch on the 6th day of June, 2018. The following counsel will be served by Electronic Document Management System:

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I hereby certify that on the 6th day of June, 2018, I did serve the Plaintiff-Appellant's Final Reply Brief on Appellee, listed below, by mailing one copy thereof to the following Plaintiff–Appellant:

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