

IN THE SUPREME COURT OF IOWA

NO. 18-0505

**UNITED ELECTRICAL, RADIO, & MACHINE WORKERS OF
AMERICA,**

Petitioner-Appellant,

v.

IOWA PUBLIC EMPLOYMENT RELATIONS BOARD,

Respondent-Appellee,

and

STATE OF IOWA and IOWA BOARD OF REGENTS,

Intervenors.

**APPEAL FROM THE IOWA DISTRICT COURT
IN AND FOR POLK COUNTY**

THE HONORABLE DOUGLAS F. STASKAL, JUDGE
POLK COUNTY NO. CVCV054946

**INTERVENORS' FINAL BRIEF
AND REQUEST FOR ORAL ARGUMENT**

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. THE COURT SHOULD AFFIRM THAT THE PROPOSALS AT ISSUE ARE PERMISSIVE SUBJECTS OF BARGAINING.

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ROUTING STATEMENT

Because this case presents substantial questions of first impression, it should be retained by the Iowa Supreme Court. *See* Iowa R. App. P. 6.1101(2)(c).

STATEMENT OF THE CASE

Nature of the Case

This is an appeal of an Iowa Code § 17A.19 Ruling on a Petition for Judicial Review. By Iowa statute, the only mandatory subjects of bargaining for non-public safety state employees are “base wages.” This case involves application of the statutory term “base wages.”

Course of Proceedings

In a Petition for Declaratory Order, Petitioner-Appellant United Electrical, Radio, & Machine Workers of America (UE) asked Respondent-Appellee Iowa Public Employment Relations Board (PERB) to declare whether certain proposals are mandatory, permissive, or prohibited subjects of bargaining. UE also presented a fifth issue, which was a question of arbitrator authority. PERB held that Proposals 1 (subparagraphs C-G), 3, and 4 are permissive subjects of bargaining, and also ruled on the question

of arbitrator authority.¹ In a Petition for Judicial Review (as amended), UE then asked the district court to overturn PERB's decision and hold that the proposals declared permissive are mandatory subjects of bargaining. The district court affirmed PERB's decision.

Now back for a third try, UE is seeking to overturn these two previous rulings interpreting the statutory term "base wages." UE is attempting to bootstrap numerous other subjects into the term as factors in determining "base wages," and under its reasoning, any term or condition of employment affecting a base wage would be mandatorily negotiable. That interpretation is not consistent with the statutory directive that "base wages" shall be interpreted narrowly and restrictively.

Statement of Facts

Intervenors have no supplement to Petitioner-Appellant's and Respondent-Appellee's Statements of Facts.

¹PERB did not rule on Proposal 2 due to insufficient facts. Amended Appendix ("Am. App.") 30. That determination is not at issue in this appeal.

ARGUMENT

I. THE COURT SHOULD AFFIRM THAT THE PROPOSALS AT ISSUE ARE PERMISSIVE SUBJECTS OF BARGAINING.

A. Standard of Review and Preservation of Error

UE correctly states that the applicable standard of review is for correction of errors at law. *See* Petitioner-Appellant’s Br. at 16. When the Legislature has clearly vested an agency with interpretive authority, the courts will reverse the agency’s ruling only when its interpretation of a statutory provision is “irrational, illogical, or wholly unjustifiable.” *Abbas v. Iowa Ins. Div.*, 893 N.W.2d 879, 886 (Iowa 2017) (quotation and citation omitted). If the Legislature has not clearly vested the agency with interpretive authority, the courts review questions of statutory interpretation for correction of errors at law. *Id.* (citations omitted).

At issue is PERB’s interpretation of the Iowa Public Employment Relations Act (PERA), Iowa Code Chapter 20. Under current law, PERB’s role is to “administer” the provisions of the chapter. Iowa Code § 20.6(1). Review for correction of errors at law is therefore appropriate under *Waterloo Education Association v. Iowa Public Employment Relations*, 740 N.W.2d 418, 420 (Iowa 2007) (citations omitted) (“*Waterloo II*”). Nevertheless, while the Court must make an independent determination as to the meaning of a particular statutory provision, it may also give weight to

the agency's interpretation if that interpretation does not make law or change the legal meaning of the statute. *See West Des Moines Educ. Ass'n v. Pub. Emp't Relations Bd.*, 266 N.W.2d 118, 125 (Iowa 1978).

UE has the burden of demonstrating that PERB's decision is invalid. "The burden of demonstrating . . . the invalidity of agency action is on the party asserting invalidity." *Bd. of Regents v. Iowa Pub. Emp't Relations Bd.*, 861 N.W.2d 268, 271 (Iowa Ct. App. 2014) (quoting Iowa Code § 17A.19(8)(a)).

Error was preserved.

B. Application of the Plain Language of Iowa Code Section 20.9 Indicates that the Proposals are Permissive Subjects of Bargaining.

As summarized by the district court, the proposals at issue in this appeal are as follows:

1. Pay of \$50,000.00 for each employee:
 - A. per year;
 - B. paid in bi-monthly payments on the 1st and 15th of each month;
 - C. for working 8 hours a day, 40 hours per week;
 - D. with nine (9) holidays;
 - E. three (3) weeks' paid vacation;
 - F. ten (10) days paid sick leave; and
 - G. time-and-a-half pay for hours worked over 40 hours in a single week.

2. An annual base wage of \$55,000.00 with a one-hour lunch break and two fifteen minute breaks for employees whose work shift is from 11:00 p.m. to 7:00 a.m.
3. Increased pay based on years of service.

Amended Appendix (“Am. App.”) 124.

Regarding the pay of \$50,000 for each employee, PERB correctly determined that subparagraphs A and B above are mandatory, and subparagraphs C-G are permissive subjects of collective bargaining. Am. App. 25-29. The district court affirmed. Am. App. 126-127.

Iowa Code § 20.9 currently states, in relevant part:

For negotiations regarding a bargaining unit that does not have at least thirty percent of members who are public safety employees, the public employer and the employee organization shall meet at reasonable times, including meetings reasonably in advance of the public employer’s budget-making process, to negotiate in good faith with respect to base wages and other matters mutually agreed upon. Such obligation to negotiate in good faith does not compel either party to agree to a proposal or make a concession. Mandatory subjects of negotiation specified in this subsection shall be interpreted narrowly and restrictively.

Iowa Code § 20.9(1) (emphases added). The Legislature chose to use the more limited term “base wages” instead of wages. Courts must look to what the Legislature said, not what it should or might have said. *See* Petitioner-Appellant’s Br. at 28-29 (quoting *Johnson v. Johnson*, 564 N.W.2d 414, 417 (Iowa 1997)).

First, “base wages” is a narrower category of “wages”:

Without question, base wages is an entirely new topic of bargaining in the context of Chapter 20 and was not defined by the legislature in House File 291. Given this context, the phrase “base” used by the legislature as a modifier of “wages” when it restricted the mandatory topics of bargaining applicable to non-public safety bargaining units should be given its common and ordinary meaning. See State v. White, 545 N.W.2d 552, 555 (Iowa 1996). In order to determine this meaning, it is appropriate to consider the dictionary definition of the modifier “base.” See Waterloo II, 740 N.W.2d at 430 (“to determine the common and ordinary meaning of words, we have often consulted widely used dictionaries”); Kidd, 562 N.W.2d at 765 (Iowa 1997) (“The dictionary provides a ready source for ascertaining the common and ordinary meaning of a word.”; referring to dictionary definition of the word “an”). See also Hearn, 797 N.W.2d at 583 (considering definition of “pursuer”); State v. Romeo, 542 N.W.2d 543, 548 (Iowa 1996) (referring to dictionary definition of the word “falsifies”). In the *American Heritage Dictionary of the English Language*, base is defined as: “Situated at or near the base or bottom: *a base camp for the mountain climbers.*” American Heritage Dictionary of the English Language, <https://ahdictionary.com/word/search.html?q=base>, last accessed on April 11, 2017. Similarly, the *Merriam-Webster Dictionary* defines base as “the starting point or line for an action or undertaking.” Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/base>, last accessed on April 11, 2017.

Br. in Supp. of Pet. for Expedited Resolution of Negotiability Dispute, *In re Oskaloosa Cmty. Sch. Dist.*, Case No. 100823, at 6 (IA PERB April 13, 2017). “Base” is used as a modifier, and must be given effect and not rendered inoperative or superfluous, void or insignificant. See *id.* at 6-7, 4, 5; *Miller v. Marshall Cnty.*, 641 N.W.2d 742, 749 (Iowa 2002) (“Each term

is to be given effect, so that no single part is rendered insignificant or superfluous.” (citation omitted)); *see also Sherwin-Williams Co. v. Iowa Dep’t of Revenue*, 789 N.W.2d 417, 427 (Iowa 2010) (interpretation should avoid absurd results and remain consistent with act’s purpose and policies (citation omitted)).

Second, in addition to using the term “base wages,” the Legislature did not include the expansive National Labor Relations Act language “other terms and conditions of employment.” *See Waterloo II*, 740 N.W.2d at 421. Because the PERA does not include the phrase “other terms and conditions of employment,” the Iowa Supreme Court has held that “if a proposal does not fall within one of the laundry list of terms contained in section 20.9, it is not a subject of mandatory bargaining.” *Id.* at 425 (citations omitted). The laundry list in section 20.9 is now limited to “base wages.”

Third, in case the language was not already clear enough, the Legislature explicitly stated: “Mandatory subjects of negotiation specified in this subsection shall be interpreted narrowly and restrictively.” Iowa Code § 20.9(1). Under the required narrow and restrictive reading for mandatory subjects of negotiation, terms and conditions of employment such as hours worked, holidays, vacation, sick leave, and time and a half are not “base wages.” If the Iowa Legislature had meant to include these items, it could

have said so. They are not listed in the statute, and would instead fall under “and other matters mutually agreed upon.” Therefore, they are permissive subjects of bargaining. “Permissive subjects are those that the legislature did not specifically list in section 20.9, but are matters upon which both the public employer and the employee organization simply agree to bargain.” *Waterloo II*, 740 N.W.2d at 421 (citation omitted).

A comparison to the mandatory topics of negotiation applicable to public safety bargaining units is helpful. While eliminating all of the mandatory topics applicable to non-public safety bargaining units except for “base wages,” the Legislature left a wide scope of mandatory topics applicable to bargaining units with at least thirty percent of members who are public safety employees. Those include “wages, hours, vacations, insurance, holidays, leaves of absence, shift differentials, overtime compensation, supplemental pay, seniority, transfer procedures, job classifications, health and safety matters, evaluation procedures, procedures for staff reduction, in-service training, [and] grievance procedures for resolving any questions arising under the agreement[.]” Iowa Code § 20.9(1). Further, the Legislature designated prohibited topics specifically with respect to non-public safety bargaining units: “insurance, leaves of absence for political activities, supplemental pay, transfer procedures,

evaluation procedures, procedures for staff reduction, and subcontracting public services shall also be excluded from the scope of negotiations.” Iowa Code § 20.9(3). In other words, the category of “wages” applicable to public safety bargaining units still exists – but the language suggests it now includes two distinct wage categories applicable to non-public safety bargaining units: “base wages” (mandatory) and “other wages” (permissive). Br. in Supp. of Pet. for Expedited Resolution of Negotiability Dispute, *In re Oskaloosa Cmty. Sch. Dist.*, Case No. 100823, at 5 (IA PERB April 13, 2017).

UE argues that meaningful negotiation on base wages is not possible unless the proposal sets forth the amount of work to be done for the wage requested. These considerations cannot override the plain language of the statute. Furthermore, PERB’s Declaratory Order discussed the provision of such information:

This does not mean that an employee organization is required to bargain base wages in a vacuum, completely unaware of the extent of the work which is to be required of employees in exchange for their base wages. PERB has long held that the duty to bargain in good faith carries with it an obligation on the employer’s part to supply the certified employee organization with information which may be relevant to bargaining. This principle has been accepted by our Supreme Court in *Greater Cmty. Hospital v. PERB*, 553 N.W.2d 869, 871 (Iowa 1996). We think the duty to bargain in good faith requires that an employer presented with proposals which are premised on the existence of certain conditions of employment has an

affirmative obligation to inform the employee organization if the premises of its proposal are not accurate, just as is the case when the issue is what job classifications the employer will establish or maintain.

Am. App. 28. That concept was reiterated in *In re Greene County Community School District*, Case No. 100828, 2017 WL 3588058, at *6 (IA PERB Aug. 16, 2017).

As the district court explained on its judicial review:

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

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

Am. App. 126.

Regarding the employees whose work shift is from 11:00 p.m. to 7:00 a.m.,² PERB correctly determined that this proposal is permissive. Am. App. 32. The district court affirmed. Am. App. 126-127. PERB and the district court determined that a proposal to pay employees of the same job classification a higher pay rate for working the overnight shift, with a one-hour lunch break and two fifteen-minute breaks, is a permissive subject of bargaining. This conclusion is consistent with PERB's definition of "base wages" as meaning 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. *See In re Columbus Cmty. Sch. Dist.*, Case No. 100820, 2017 WL 2212060, at *3 (IA PERB May 17, 2017). The employees who are paid more for the overnight shift receive a "shift differential" which is a form of additional pay, not included within an employee's base wage.

²At oral argument before PERB, UE clarified that all of the employees in this group are employed in the same job classification, and that other employees working different schedules are also employed in that same job classification, although at a different base wage than that specified in the proposal. Am. App. 31-32.

Regarding increased pay based on years of service,³ PERB correctly held that “if an employer agrees or unilaterally determines that a classification or classifications are to exist, the minimum salary for each (*i.e.*, the “Year 1” step) is mandatorily negotiable. The remainder of the proposal is a permissive subject of bargaining.” Am. App. 31. The district court affirmed. Am. App. 126-127. In other words, it is only mandatory to bargain on the first step in each job classification, and the remaining steps are permissive subjects of bargaining.

Under a narrow and restrictive reading of “mandatory,” only the first step in each job classification constitutes “base wages.” PERB defined the new section 20.9 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.” *In re Columbus Cmty. Sch. Dist.*, 2017 WL 2212060, at *3; *see also* Am. App. 24 (citing *Columbus* and continuing to subscribe to that definition).

The Court should reject UE’s argument that every single step in a job classification should be considered a “base wage.” As expressed by PERB

³At oral argument before PERB, UE clarified that its reference to the employee organization representing employees in four different “pay grades” actually refers to four different job classifications. Am. App. 30.

on the same day as *Columbus*: “Such longevity pay, although within the scope of the permissive subject of ‘wages,’ does not fall within the meaning of the narrower mandatory topic of ‘base wages’ as we have defined it. These provisions are accordingly permissive subjects of bargaining.” *In re Oskaloosa Cmty. Sch. Dist.*, Case No. 100823, 2017 WL 2212061, at *3 (IA PERB May 17, 2017).

When the *Oskaloosa* PERB decision cited above was reviewed by the district court, the court reached a decision similar to the district court here, affirming PERB’s decision that involved interpretation of the same key term of “base wages.” *Oskaloosa Educ. Ass’n v. Iowa Pub. Emp’t Relations Bd.*, 2018 WL 659020 (Iowa Dist. Ct. Jan. 26, 2018).

II. THE COURT SHOULD AFFIRM THE STATEMENT OF ARBITRATOR’S AUTHORITY.

A. Standard of Review and Preservation of Error

UE correctly states that the applicable standard of review is for correction of errors at law. *See* Petitioner-Appellant’s Br. at 37. Error was preserved.

B. Harmonizing the Statutes Indicates that an Arbitrator May Consider the Existing but Expiring Collective Bargaining Agreement.

PERB correctly determined that an arbitrator may look to the existing collective bargaining agreement to determine the existing base wages. Am.

App. 38. The district court affirmed. Am. App. 127. The Court should affirm the statement of the arbitrator's authority.

Iowa Code § 20.22(8)(b)(1) provides that “[p]ast collective bargaining agreements between the parties or bargaining that led to such agreements” shall not be a factor considered by the arbitrator. However, that statute would not negate other statutory requirements, namely that any increase awarded conform to Iowa Code § 20.22(10). *See* Iowa Code § 20.22(10)(b)(1) (prohibiting an arbitrator from selecting a proposal that represents an increase in each year of a collective bargaining agreement that is greater than the lesser of three percent or consumer pricing index for urban consumers in the midwest region). To the extent UE’s proposal assumes an award could violate § 20.22(10), Intervenors disagree with such an assumption. The statutes may be harmonized, and an arbitrator may consider the existing but expiring collective bargaining agreement.

CONCLUSION

This Court should affirm the decision that the proposals at issue are permissive, and should also affirm on the question of arbitrator authority.

REQUEST FOR ORAL ARGUMENT

Intervenors respectfully request oral argument.

Respectfully submitted,

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