

**IN THE COURT OF APPEALS OF IOWA**

No. 2-102 / 11-1174  
Filed April 25, 2012

**DEBORAH S. SCHROEDER,**  
Petitioner-Appellant,

**vs.**

**PUBLIC EMPLOYMENT RELATIONS  
BOARD and STATE OF IOWA  
(DEPARTMENT OF EDUCATION),**  
Respondents-Appellees.

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Appeal from the Iowa District Court for Polk County, D.J. Stovall, Judge.

Deborah Schroeder appeals from the district court's judicial review ruling affirming the finding she was exempt from the grievance process set forth in Iowa Code section 8A.415 (2009). **REVERSED AND REMANDED WITH INSTRUCTIONS.**

James L. Sayre of James L. Sayre, P.C., Clive, for appellant.

Thomas J. Miller, Attorney General, Jeanie Kunkle Vaudt, Assistant Attorney General, and Jan V. Berry of the Public Employment Relations Board for appellees.

Heard by Eisenhauer, C.J., and Doyle and Mullins, JJ.

**DOYLE, J.**

Deborah Schroeder appeals from the district court's order on judicial review affirming a Public Employment Relations Board (PERB) decision concluding Schroeder was not a merit-covered employee under Iowa Code chapter 8A, subchapter IV, for purposes of her separation from employment with the Iowa Department of Education (IDOE). PERB concluded Schroeder was ineligible to pursue merit grievance procedures because she was a member of IDOE's "professional staff." Iowa Code section 256.9(4) (2009) provides that members of IDOE's professional staff are not subject to the merit system provisions of chapter 8A, subchapter IV. Schroeder maintains she was not a member of IDOE's "professional staff" and the merit system provisions were applicable to her. Because we agree with Schroeder, we reverse and remand for further proceedings.

***I. Background Facts and Proceedings.***

In 2005, Schroeder applied for a position with the IDOE as an "Education Program Consultant (Finance)." The position's job opening announcement stated the salary range for the position was \$46,550.40 to \$70,241.60 annually and the position did not require a degree if the applicant had the requisite amount of experience. Schroeder provided her resume to the IDOE, which listed her advanced degrees in the business field, as well as experience in the accounting field and as a business manager for two different school districts.

Schroeder was ultimately offered the position. The offer letter she received did not indicate the position was classified as part of the IDOE's "professional staff," considered a non-merit system position, or exempt from Iowa

Code chapter 8A. Later materials Schroeder received after accepting the position, including a position description questionnaire and written job description, also did not indicate the position was a “professional staff” position, a non-merit system position, or exempt from Iowa Code chapter 8A.

The questionnaire specifically stated the position was not considered to be supervisory. However, the job description did define the position as one who “[p]rovides professional education consultative services and represents the [IDOE]” in certain instances. Additionally, the job description set forth examples of work for the position, including:

Advises schools and school districts professional staff through in-service and staff development meetings, workshops, or individual consultation on the evaluation of curriculum structure or design, instructional methods, use of community resources . . . so as to provide improvement and consistency in PK-12 and two-year post-secondary education programs throughout the state.

Coordinates, interprets, and confers with school district professional staff . . . regarding the compliance of educational programs with provisions of the Code of Iowa, [IDOE] administrative rules . . . .

Serves on task forces and attends professional conferences and meetings . . . .

. . . .

Evaluates the education and experience of individuals applying for teaching certificates, endorsements, approvals, statements of professional recognition . . . .

Among the competencies required for the job were knowledge of the IDOE’s “policies, procedures, and regulations,” “professional teacher standards and educational requirements,” and the “[a]bility to apply and interpret laws, rules, regulations and policies/procedure as they relate to the [IDOE] and the educational programs of the state.”

On December 3, 2008, Schroeder was notified in writing she was “being placed on paid administrative leave which may lead to dismissal from [her] at-will position at the [IDOE]” and she could request a hearing with the director of the IDOE pursuant to section 256.10. Attached to the notification was a memo outlining the reasons for her potential termination action, including allegations of insubordination, unilaterally giving guidance to the field, not completing essential job functions on time and failing to notify her supervisor of same, outstanding work deliverables reaching back over one year, doing work not assigned to her, and not following the chain of command.

Thereafter, Schroeder requested a hearing with the director of the IDOE. Following the hearing, the director on January 2, 2009, notified Schroeder in writing that “after reviewing all the information, [the director had] made the decision to uphold the termination of [Schroeder’s] at-will position at the [IDOE]” effective immediately.

On January 8, 2009, Schroeder filed a non-contract grievance with the Iowa Department of Administrative Services (IDAS). Five days later, IDAS dismissed her grievance stating:

After reviewing the material [Schroeder has] provided . . . , [IDAS] has determined that [it] does not have the authority to provide the remedy [Schroeder has] requested. As a non-contract, non-merit employee, [Schroeder’s] employment was at the discretion of the [d]irector of the [IDOE]. As [Schroeder has] had a hearing in front of the [d]irector prior to [her] discharge from employment, it appears that [Schroeder] has exhausted [her] recourse under the State’s rules.

On January 9, 2009, Schroeder filed a state employee grievance appeal before the PERB pursuant to Iowa Code section 8A.415(2), arguing the IDOE did

not meet the requirements for just cause in terminating her employment. The IDOE and IDAS (the State) filed an answer and motion to dismiss, asserting Schroeder was not a merit system covered employee and her remedy was limited to the process set forth in section 256.10. Following a hearing, an administrative law judge (ALJ) conversely concluded Schroeder was a merit system covered employee and eligible to pursue her section 8A.415(2) appeal.

The State then filed an interlocutory appeal to the PERB challenging the ALJ's finding that Schroeder was a merit system covered employee. The PERB granted the State's appeal, and a hearing was held. Following the hearing, the PERB reversed the ALJ, concluding Schroeder was not a merit-system-covered employee. Specifically, the PERB determined the position held by Schroeder was that of a professional staff employee and was therefore exempt from the merit system pursuant to Iowa Code section 256.9(4). In so finding, the PERB determined it did not have jurisdiction to hear Schroeder's section 8A.415(2) grievance and dismissed her appeal. Schroeder sought judicial review of the PERB's dismissal of her appeal. The district court affirmed, finding "PERB did not err in interpreting the term 'professional staff'" and in dismissing Schroeder's appeal.

Schroeder now appeals.

## ***II. Scope and Standard of Review.***

Iowa Code section 17A.19(10) governs judicial review of agency decision making. *Renda v. Iowa Civil Rights Comm'n*, 784 N.W.2d 8, 10 (Iowa 2010). We will apply the standards of section 17A.19(10) to determine whether we reach the same results as the district court. *Id.* "The district court may grant relief if the agency action has prejudiced the substantial rights of the petitioner, and the agency action meets one of the enumerated criteria contained in

section 17A.19(10)(a) through (n).” *Id.*; see also Iowa Code § 17A.19(10).  
*Evercom Sys., Inc. v. Iowa Utils. Bd.*, 805 N.W.2d 758, 762 (Iowa 2011).

We defer to the agency’s interpretation of a statute when the legislature has clearly vested the agency with the authority to interpret a statute. [*Renda*, 784 N.W.2d at 11]. When the legislature has clearly vested the agency with such authority, we “will only reverse a decision of statutory construction which is irrational, illogical, or wholly unjustifiable.” [*Xenia Rural Water Dist. v. Vegors*, 786 N.W.2d 250, 252 (Iowa 2010)]; see also Iowa Code § 17A.19(10)(f). If, however, the agency has not clearly been vested with such authority, we review questions of statutory interpretation for correction of errors at law. *Xenia*, 786 N.W.2d at 252; see also Iowa Code § 17A.19(10)(c).

*Westling v. Hormel Foods Corp.*, \_\_\_ N.W.2d \_\_\_, \_\_\_, 2012 WL 424102, at \*4 (Iowa 2012).

In this case, we are reviewing the PERB’s interpretation of Iowa Code section 256.9(4). An examination of chapter 256 does not reveal any basis for concluding the legislature clearly vested the PERB with authority to interpret the subsection at issue, nor do the parties challenge the district court’s determination that it need not give deference to the PERB’s interpretation. Therefore, we review the PERB’s statutory interpretation for correction of errors at law.

### ***III. Discussion.***

With these principles in mind, we turn to Iowa Code section 256.9, which provides, in relevant part:

[T]he director [of the IDOE] shall:

• • • •

4. Employ personnel and assign duties and responsibilities of the department. The director shall appoint a deputy director and division administrators deemed necessary. They shall be appointed on the basis of their professional qualifications, experience in administration, and background. *Members of the*

*professional staff are not subject to the merit system provisions of chapter 8A, subchapter IV, and are subject to section 256.10.<sup>1</sup>*

(Emphasis added.)

Schroeder argues the “[m]embers of the professional staff” language in the statute applies only to the positions stated in the second sentence—the deputy director and division administrators. Conversely, the State argues the PERB correctly found that section 256.9(4) “refers to hiring ‘personnel’ in addition to appointing a deputy director and division administrators, clearly implying additional employees, other than those specifically listed, can be considered as professional staff.” Because PERB, and the district court thereafter, found Schroeder met the dictionary definitions of “professional” and “staff,” they concluded Schroeder was a member of the IDOE’s “professional staff” within the meaning of the statute and therefore exempt from chapter 8A.

When a statute or rule is plain and its meaning is clear, the rules of statutory construction do not permit courts to search for meaning beyond its express terms. Courts generally presume words contained in a statute or rule are used in their ordinary and usual sense with the meaning commonly attributed to them. Moreover, courts construe a term according to its accepted usage when a statute does not define it. Courts only resort to rules of statutory construction when the explicit terms of a statute or rule are ambiguous. A statute or rule is ambiguous if reasonable minds could differ or be uncertain as to the meaning of the statute.

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<sup>1</sup> Iowa Code section 256.10(2) (“Employment of professional staff”) states:  
Appointments to the professional staff of the department shall be without reference to political party affiliation, religious affiliation, sex, or marital status, but shall be based solely upon fitness, ability, and proper qualifications for the particular position. The professional staff shall serve at the discretion of the director. A member of the professional staff shall not be dismissed for cause without appropriate due process procedures including a hearing.

*Office of Consumer Advocate v. Iowa Utils. Bd.*, 744 N.W.2d 640, 643-44 (Iowa 2008) (internal citations and quotations omitted). Under the statutory scheme of section 256.9(4), as well as the fact “professional staff” is not defined within the chapter, we find reasonable persons could disagree as to whether the legislature’s use of “professional staff” in the statute refers only to the prior stated positions in that statute, i.e., deputy director and division administrators, or whether the term “professional staff” has broader application. We must therefore “look to the intent of the legislature to resolve this ambiguity.” *Holstein Elec. v. Breyfogle*, 756 N.W.2d 812, 815 (Iowa 2008).

In determining legislative intent, we look at

the words used by the legislature, not . . . what the legislature should or might have said. We cannot extend, enlarge, or otherwise change the meaning of a statute under the pretense of statutory construction. When we interpret a statute, we are required to assess the statute in its entirety, not just isolated words or phrases. Indeed, we avoid interpreting a statute in such a way that portions of it become redundant or irrelevant. We look for a reasonable interpretation that best achieves the statute’s purpose and avoids absurd results.

*In re Conservatorship of Alessio*, 803 N.W.2d 656, 661 (Iowa 2011) (internal citations and quotation marks omitted); see also *Oyens Feed & Supply, Inc. v. Primebank*, 808 N.W.2d 186, 193 (Iowa 2011). “When the words of a statute are not defined by the legislature, we may refer to prior decisions of [the Iowa Supreme Court] and others, similar statutes, dictionary definitions, and common usage.” *Neal v. Annett Holdings, Inc.*, \_\_\_ N.W.2d \_\_\_, \_\_\_, 2012 WL 676991, at \*3 (Iowa 2012) (citation and internal quotation marks omitted).

Upon our review of the statute in its entirety, the statute’s purpose and history, similar statutes, and prior decisions of the Iowa Supreme Court, we find



the interpretation of “professional staff” by the PERB and the district court to be too broad within the meaning of section 256.9(4).

We first turn to the history of the employment of staff by the now IDOE. The predecessor of the IDOE, the Iowa Department of Public Instruction, was established by the Iowa legislature in 1953. 1953 Iowa Acts ch. 114, § 19; see *also* Iowa Code ch. 257 (1954); 1986 Iowa Acts ch. 1245, § 1401 (establishment of Iowa Department of Education) (codified at Iowa Code § 256.1 (1987)). The legislature explained the bill was to provide for, among other things, “the appointment of a superintendent of public instruction and assistant superintendents and such other staff members and employees as necessary, and to prescribe the powers and duties of such superintendents and staff members; . . . .” 1953 Iowa Acts ch. 114. The act gave the superintendent the power to [o]rganize, staff and administer the . . . department . . . .” 1953 Iowa Acts ch. 114, § 17 (codified at Iowa Code § 257.17(5) (1954)).

Additionally, the act set forth separate sections for the appointment of employees and for the appointment of assistants, providing:

The state superintendent shall appoint all employees, with due regard to their qualifications for the duties to be performed, designate their titles and prescribe their duties. If deemed advisable, the state superintendent may for cause effect the removal of any employee in the state department of public institution.

1953 Iowa Acts ch. 114, § 21 (codified at Iowa Code § 257.21 (1954) (“Employees of department”). And, “[t]he state superintendent may appoint not more than two assistant superintendents subject to the approval of the state board. . . . The qualifications for assistant superintendent shall be the same as

required for the superintendent.” 1953 Iowa Acts ch. 114, § 22 (codified at Iowa Code §§ 257.22 (1954) (“Assistant superintendents”)).<sup>2</sup> There is a clear delineation between employees of the department and assistant superintendents.

The phrase “professional staff” appears in section 24 of the act:

The salary of the superintendent . . . shall be fixed . . . . The salaries of the assistant or assistants provided for in section 22 shall be fixed . . . . All appointments to the professional staff of the department of public instruction shall be without reference to political party affiliation, religious affiliation, sex, or marital status, but shall be based solely upon fitness, ability and proper qualifications for the particular position. The professional staff, including the state superintendent, shall serve at the discretion of the state board; provided, however, that no such person shall be dismissed for cause without at least ninety days notice, . . . .

1953 Iowa Acts ch. 114, § 24 (codified at Iowa Code § 257.24 (1954) (“Salaries of superintendent and assistants.”)). The phrase “professional staff” was not defined, although it is clear the term did not apply to every employee of the department. Although included in the “salaries of superintendent and assistants” section of the statute, there is no clue as to whether the term “professional staff” was intended to apply to employees other than the superintendent and assistants.

In 1986, the legislature reorganized governmental departments. In reorganizing, the legislature repealed chapter 257 (1985), “Department of Public Instruction,” and created chapter 256’s “Department of Education.” See 1986 Iowa Acts ch. 1245, §§ 1401, 1499A. The superintendent became the “director”

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<sup>2</sup> The term “assistant superintendent” was later changed to “deputy state superintendent.” 1970 Iowa Acts ch. 1106, § 1 (“The state superintendent shall appoint a deputy state superintendent.”). Although a merit system existed then, see Iowa Code § 8.5(6)(d) (1954), the merit system as we generally know it was adopted in 1967. See *Vislisel v. Univ. of Iowa*, 445 N.W.2d 771, 773 (Iowa 1989).

of the department. *Compare* Iowa Code § 257.11 (1985) *with* Iowa Code § 256.8 (1987). The duties of the director relevant here were set forth in Iowa Code section 256.9(4), which is substantively the same as it is today. 1986 Iowa Acts ch. 1245, § 1409; Iowa Code § 256.9(4) (2011). The separate sections concerning employment of employees and appointment of the deputy superintendent as set out in the 1985 Code were morphed into one subsection. *Id.*; *also compare* Iowa Code § 257.21-22 (1985) *with* Iowa Code § 256.9(4) (1987). The term “employee” was changed to “personnel.” *Id.* Additionally, after providing that a deputy director and division administrators be appointed on the basis of their professional qualifications, administration, and background, the section’s language that immediately follows states: “Members of the professional staff are not subject to chapter 19A and shall be employed pursuant to section 256.10.” Iowa Code § 256.9(4) (1987).

Section 256.10, entitled “Employment of professional staff,” contains substantially similar language to the “professional staff” language from previous code section 257.24 (“Salaries of superintendent and assistants”). *Compare* Iowa Code § 257.24 (1985) *with* Iowa Code § 256.10 (1987). Criteria for appointment of professional staff are the same as those set forth in the prior code provision. Iowa Code § 256.10 (2009). The 1985 code provided that professional staff and the superintendent serve at the pleasure of the state board. *Id.* § 257.24 (1985). The 1987 revision provides professional staff serves at the discretion of the director. *Id.* § 256.10 (1987). Again, the term “professional staff” was still seemingly tied to the director, deputy directors, and division administrators, as the legislature made no suggestion to the contrary, but

in the context of the whole statute, such a reading of the statute seems overly restrictive.

Prior to the 1986 reorganization act, section 19A.3 stated in relevant part:

The merit system shall apply to all employees of the state and to all positions in the state government . . . except the following:

. . . .  
7. The superintendent of public instruction and members of the professional staff of the department of public instruction, appointed under the provisions of section 257.24, who possess a current, valid teacher's certificate or who are assigned to vocational activities or programs.

*Id.* § 19A.3 (1985). Thus, the appointment of general employees under the provisions of section 257.21 were not exempt from the merit system. *See id.* The 1986 act struck section 19A.3 as it existed in its entirety and, among other things, removed subsection 7 cited above. *See* 1986 Iowa Acts ch. 1245, § 205. It added subsection 17, providing that “[o]ther employees specifically exempted by law,” as section 8A.411(17) provides today. *Id.* However, section 19A.3 as amended in 1987 contained an unnumbered paragraph<sup>3</sup> stating: “The director of the department of personnel shall negotiate . . . with the director of the [IDOE] concerning the applicability of the merit system to the professional employees of [its] respective agenc[y].”

The above review provides little illumination as to whether or not the legislature intended to apply the term “professional staff” to IDOE employees other than the director, deputy directors, and division administrators. Merely examining the dictionary definitions of “professional” and “staff” separately does

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<sup>3</sup> This unnumbered paragraph referencing the IDOE was removed in 1997. *See* 1997 Iowa Acts ch. 212, § 20.

not answer our inquiry. After all, a clerk/typist could, through education, training, and experience, become “professional” at performing assigned tasks in this staff position, but still not be considered a part of the “professional staff.” On the other hand, a lawyer could be hired to the same clerk/typist position, but the fact the lawyer was a “professional” would not transform the staff position to one of “professional staff.”

Under the record before us, Schroeder could be considered a “professional” and a member of IDOE’s “staff,” but does that necessarily make her a member of IDOE’s “professional staff” as referenced in sections 256.9(4) and 256.10? We think not after looking to our supreme court’s interpretation of the phrase in *Hough v. Iowa Department of Personnel*, 666 N.W.2d 168, 171 (Iowa 2003). In that case, a position at the Iowa Department of Economic Development held by Hough was eliminated, and Hough’s employment was terminated. *Hough*, 666 N.W.2d at 169. Hough appealed his termination and requested a hearing before the Iowa Department of Personnel (now the IDAS), assuming the position he had held was “considered a merit-based position and covered by the procedural protections of Iowa Code chapter 19A . . . .” *Id.* However, Hough’s position and his previous positions were merit exempt, and Hough had signed letters accepting the terms of his employment as being “exempted from merit rules.” *Id.* at 172.

At that time, Iowa Code section 15.106 provided one of the duties of the director of the IDEED was to

[e]mploy personnel as necessary to carry out the duties and responsibilities of the department, consistent with the merit system provisions of chapter 19A for nonprofessional employees.

Professional staff of the department are exempt from the merit system provisions of chapter 19A.

The IDOP concluded section 15.106's phrase "professional staff" applied to Hough and he was therefore exempt from the merit system provisions of chapter 19A. *Hough*, 666 N.W.2d at 170.

The district court, and then the supreme court thereafter, affirmed the IDOP's ruling. *Id.* at 170, 174. The supreme court stated:

The term "professional staff" is not defined, in part, because the legislature intended to grant flexibility to existing agency heads and ensure successors would have the same flexibility as to the members of their professional staff. See *Lee [v. Halford]*, 540 N.W.2d 426, 429 (Iowa 1995)]. Because the legislature left "professional staff" undefined, we look to the ordinary, commonly understood meaning of the word. The American Heritage Dictionary defines "professional," in relevant part, as "Having great skill or experience in a particular field or activity." The American Heritage Dictionary 989 (2d college ed. 1985). A professional is "One who has an assured competence in a particular field or occupation." *Id.* "Staff" is the "personnel who assist a director in carrying out an assigned task." Webster's Collegiate Dictionary 1140 (10th ed. 2002). Iowa Code section 15.106(2) does not say "professionals" are merit exempt. Rather it states "professional staff" is merit exempt. The word "staff" makes the scope of those who are considered a member of the professional staff even more broad.

*Id.* at 173. The court went on to explain:

The ordinary meaning of "professional staff" precisely describes the nature of Hough's work as shown by the record. Hough served in high-level positions. One of his job titles included the word "professional." He worked in management and supervisory positions and operated at the policy-making level.

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Hough's ten years of experience in economic development certainly supports the conclusion that he was "professional staff." Hough earned approximately \$75,000 per year for his work with the department. Given all of the above circumstances, a reasonable person could conclude Hough was properly classified as "professional staff."

In sum, there is substantial evidence to conclude Hough was aware of his classification as a merit-exempt employee.

*Id.* at 174.

Schroeder was not “professional staff” as that term is defined in *Hough*. Schroeder’s position was not a management, supervisory, or policy-making position. See also *Phoenix Capital, Inc. v. Dowell*, 176 P.3d 835, 842 (Colo. Ct. App. 2007) (concluding “the phrase ‘professional staff to executive and management personnel’ is limited to those persons who, while qualifying as ‘professionals’ and reporting to managers or executives, primarily serve as key members of the manager’s or executive’s staff in the implementation of management or executive functions”). It appears Schroeder was merely responsible for implementing the IDOE’s policies and was not involved in management or executive functions. Further, there is no evidence she was told, unlike Hough, the position was considered “professional staff” within the meaning of section 256.9(4) and therefore exempt from the merit system. Finally, we note the court in *Hough* found the chapter 20 definition of “professional employee” was not applicable to the phrase “professional staff” as stated in section 15.106. See *Hough*, 666 N.W.2d at 173. The legislature did not set forth a meaning thereafter for either chapter 15 or 256, and the interpretation of “professional staff” by the court in *Hough* remains good law.<sup>4</sup> We therefore find Schroeder was not a member of the IDOE’s “professional staff” as set forth in section 256.9(4).

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<sup>4</sup> In 2009 legislature revised sections in chapter 15 and altogether eliminated 15.106. See Iowa Acts 2003 ch. 82, § 12.

***IV. Conclusion.***

Considering the statute in its entirety, the statute's purpose and history, similar statutes, and prior decisions of the Iowa Supreme Court, we conclude the PERB and the district court erroneously determined Schroeder was a member of the IDOE's "professional staff" and therefore exempt from the provisions of chapter 8A. As a result, the decision of the district court is reversed and the case remanded for further proceedings.

**REVERSED AND REMANDED WITH INSTRUCTIONS.**