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IN THE SUPREME COURT OF IOWA

NO. 18-0505

UNITED ELECTRICAL, RADIO, & MACHINE WORKERS OF AMERICA

Plaintiff-Appellant,
vs.

IOWA PUBLIC EMPLOYMENT RELATIONS BOARD,

Defendant- Appellee

APPEAL FROM THE IOWA DISTRICT COURT
IN AND FOR POLK COUNTY,
THE HONORABLE DOUGLAS F. STASKAL

PLAINTIFF-APPELLANT'S FINAL BRIEF AND REQUEST FOR ORAL SUBMISSION

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STATEMENT OF THE ISSUES

I. PERB erred in defining the term of base wages in such a manner as to render the term virtually meaningless.

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Wages, *Black's Law Dictionary* 1573 Seventh Edition (1999)

II. PERB erred in determining that the employee organization may only bargain for new members of the bargaining unit who would be on step one of the job classification and not for the vast majority of experienced individual members of the bargaining unit.

Columbus Community School District and Columbus Education Association, 17 PERB 100820 at 3
Iowa Ins. Institute v. Core Group of Iowa Ass'n for Justice, 867 N.W.2d 58 (Iowa 2015)
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III. PERB erred in determining that a proposal to pay employees a higher base wage for working the overnight shift (11:00 p.m. to 7:00 a.m.) is a permissive subject of bargaining.

Waterloo Education Association v. Public Employment Relations Board, 740 N.W.2d 418 (Iowa 2007)
Iowa Code § 17A.19(10)(e)
Base Rate, *Roberts Dictionary of Industrial Relations* Third Edition (1986)

IV. PERB erred in determining that an arbitrator may consider the wages paid in past collective bargaining agreements as consideration for determining an award on the subject of base wages.

In re Det. Of Betsworth, 711 N.W.2d 280 (Iowa 2006)
Johnson v. Johnson, 564 N.W.2d 414 (Iowa 1997)
Iowa Code § 20.22(7)(A)(b)(1)
Iowa R. App. P. 6.907

ROUTING STATEMENT

Pursuant to Iowa R. App. P. 6.110, the Iowa Supreme Court should retain this case as it presents a significant issue of law where there is no controlling precedent from the Iowa Supreme Court or Iowa Court of Appeals and is an issue of first impression and of public importance that should be determined by the Iowa Supreme Court. Specifically, although this Court has ruled on negotiability disputes many times in the past, this is the first case to reach the Court as to the scope of negotiations subsequent to the substantial revisions to Iowa Code Chapter 20.

STATEMENT OF THE CASE

This is an appeal by the United Electrical, Radio, and Machine Workers of America (hereinafter UE) from a decision of the Polk District Court upholding a declaratory ruling issued by the Public Employment Relations Board (hereinafter PERB) on June 29, 2017.

This case arose when UE, an employee organization, filed a petition with PERB seeking a ruling as to whether certain bargaining proposals were mandatory subjects of bargaining requiring the public employer to engage in negotiations under Iowa Code Chapter 20, after said chapter was revised by House File 291.The proposals sought an interpretation of the term "base wages" as it appears in Iowa Code Section 20.9. UE also inquired about the

authority of an arbitrator to consider past collective bargaining agreements between the parties negotiating in determining an appropriate "base wage."

PERB held that UE's proposals were in whole or in large part non-mandatory or excluded subjects of bargaining therefore not requiring the public employer to engage in negotiations on such items. The questions presented asked PERB to determine for whom a "base wage" could be negotiated and whether proposals that set forth the work to be done in return for the base wage requested were mandatory subjects of bargaining. PERB responded that UE could only negotiate a "base wage" for the beginning step of job classifications as unilaterally determined by the employer. (Declaratory Ruling p. 15) (App. 31). The result is that UE could negotiate a base wage for only a very few of the individuals in the bargaining unit. PERB also held that the employee organization could not negotiate the work to be done (hours, vacation time, etc.) in return for the base wage proposed. (Declaratory Ruling p. 11) (App. 27).

PERB also held that despite a statutory provision to the contrary, Iowa Code Section 20.22(7)(b)(1), an arbitrator could consider the past collective bargaining agreements between the parties in determining the appropriate "base wage" on the basis that the expiring collective bargaining agreement

was not a "past" collective bargaining agreement. (Declaratory Ruling p. 21) (App. 37).

The Polk County District Court, in a ruling on petition for judicial review, upheld PERB's decision in all respects while agreeing that the decision precluded the employee organization from negotiating a base wage rate for the vast majority of employees in the bargaining unit. (District Court Decision 6) (App. 126). This appeal followed.

STATEMENT OF THE FACTS

The facts in this case are not in dispute. The facts on which PERB based its ruling and the District Court affirmed are as set forth below.

The Appellant, UE, is an employee organization as defined by Iowa Code Section 20.3(4) which exists for the purpose of representing employees in their employment negotiations and disputes. (Declaratory Ruling p. 1) (App. 17). UE is the parent organization for state wide bargaining units including Local 893 and Local 896, which have been certified to represent public employees in the state. (Declaratory Ruling p. 1-2) (App. 17-18). "Local 896 represents a unit of graduate and professional students employed at the University of Iowa, while Local 893 represents units of State employees commonly referred to as the "science" and "social services" units." (Declaratory Ruling p. 1-2) (App. 17-18).

On February 16, 2017 amendments to Iowa Code Chapter 20 were signed into law limiting the mandatory subjects of bargaining for non-public safety employees to “base wages.” Iowa Code Section 20.9. (Declaratory Ruling p. 1) (App. 17). The Iowa legislature did not define the term base wages in Iowa Code Chapter 20.

UE seeks to have the Court reverse the determination by PERB and the upholding by the District Court that the proposals presented to PERB are excluded or non-mandatory subjects of bargaining. UE originally brought five (5) proposals to PERB’s attention in their request for a declaratory ruling. UE appealed to the District Court PERB’s ruling on four (4) of those proposals. Said proposals in the numerical heading as presented to PERB are set forth below.

Proposal I

Appellant seeks reversal of PERB’s holding that proposals C-G constituted permissive or prohibited subjects of bargaining.

> “Employee Organization is proposing an annual base wage of
>
> 1. $50,000.00 for each employee,
>
>   A. per year beginning July 1, 2018 through June 30, 2019,
>   B. distributed 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,

G. time and a half for hours worked over 40 hours in a single week."

Proposal III

UE proposed to negotiate a base wage for all presently employed and new individual employees in the bargaining unit**.**

Pay Grade 1:
Year 1 - $30,000
Year 2 - $32,000
Year 3 - $35,000
Year 4 - $40,000
Year 5 - $46,000

Pay Grade 2:
Year 1 - $35,000
Year 2 - $38,000
Year 3 - $41,000
Year 4 - $45,000
Year 5 - $50,000

Pay Grade 3:
Year 1 - $40,000
Year 2 - $44,000
Year 3 - $48,000
Year 4 - $52,000
Year 5 - $56,000

Pay Grade 4:
Year 1 - $45,000
Year 2 - $49,000
Year 3 - $54,000
Year 4 - $60,000
Year 5 - $66,000

PERB held that UE could only negotiate a base wage only for new employees at the beginning step of job classification(s) unilaterally determines by the employer. UE seeks a reversal and a ruling that a proposal to negotiate a base wage for each individual in the bargaining unit is a mandatory subject of bargaining.

Proposal IV

The employee organization represents a group of employees working on a 11:00 p.m. to 7:00 a.m. work schedule established by the employer, for which it proposes an annual base wage of $55,000.00 with a one-hour lunch break and two fifteen-minute breaks. PERB is asked to state whether Proposal IV is a mandatory, permissive or prohibited subject of bargaining.

Appellant seeks a ruling that PERB erred in determining that Proposal IV in its entirety is a prohibited subject of bargaining and a ruling from this court that the proposal is a mandatory subject of bargaining.

Proposal V

The employee organization, representing employees in non-safety bargaining unit and the public employer, have negotiated on the subject of "base wages" and have been unable to reach an agreement. The employee organization therefore has requested arbitration. The contract ending June 30, 2018 provides for an annual base wage for all employees of $45,000.00. The employers final offer at arbitration is an annual base wage of $35,000.00 for all the employees in the bargaining unit. The employee organization's final offer for arbitration is an annual base wage of $55,000.00 for all employees in the bargaining unit. The public employer states that the arbitrator cannot consider the employee organizations award since it is greater than the increase in the consumer price index and in any event is greater than 3%. The employee organization states that the arbitrator can neither consider or even be informed of base wages paid to employees under the expiring contract in that the law as

amended provides:

"The arbitrator shall not consider the following factors:

> (1) Past collective bargaining agreements between the parties or bargaining that led to such agreements."

Thus, the employee organization states that neither side can rely on a collective agreement whose terms have expired. Thus, just as the employer is free to ignore the prior agreement and offer a wage substantially less than the employees were receiving, the employee organization is free to propose a substantially greater base wage. To hold otherwise would require the arbitrator to look at the wages paid in the past collective bargaining agreement which the arbitrator specifically is precluded from doing. To hold otherwise would mean that the terms of a contract that had expired in June of 2018 absent voluntary agreement limit the wages that an arbitrator could award and an employee could receive in perpetuity. In other words, the ending base wage rate in the June 30, 2018 contract would be the starting point for the consideration of every wage rate thereafter be it twenty-five or fifty years in the future.

The question posed is may the arbitrator look to the past collective bargaining agreement, the one expiring June 30, 2018 and consider the wage paid in past collective bargaining as consideration for an award on base wages.

PERB and subsequently the District Court found that the arbitrator could consider the past wages of an employee despite a statutory provision precluding such consideration on the basis that the expiring collective bargaining agreement was really not a "past" collective agreement. (Declaratory Ruling p. 20) (App. 36); (District Court Decision 7) (App. 127).

UE seeks reversal of PERB's determination and the District Court's affirmation.

ARGUMENT

The central issue in this case is the meaning to be given the term "base wages" as it appears in Iowa Code Section 20.9 as amended by House File 291. UE believes that the term "base wage" must be interpreted in a meaningful and reasonable manner. Specifically, UE believes that any interpretation of the terms must (1) allow UE to negotiate base wages for each individual member of the bargaining unit and (2) to negotiate the work to be performed for the base wage requested.

I. PERB erred in defining the term of base wages in such a manner as to render the term virtually meaningless.

UE proposed the following proposal:

> "Employee Organization is proposing an annual base wage of
> 1. $50,000.00 for each employee,
>   A. per year beginning July 1, 2018 through June 30, 2019,
>   B. distributed 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,
>   G. time and a half for hours worked over 40 hours in a single week."

PERB, in erring, determined that the meaning of "base wage" means that the "base wage" can only be negotiated for new members of the bargaining unit and that a proposal setting forth the work to be performed in

return for a base wage of $50,000 for all bargaining unit members is a permissive subject of bargaining.

A. <u>Preservation of Error</u>

UE, in its Request for Declaratory Ruling with PERB requested a determination on its proposals submitted. PERB in turn ruled on the proposals submitted by PERB. UE timely filed a petition for judicial review in Polk County District Court pursuant to Iowa Code 17A and then timely appealed from the District Court's determination. Therefore, error has been preserved.

B. <u>Scope and Standard of Review</u>

The relief sought is that the Court hold that the proposals on which review was sought are mandatory subjects of bargaining, thus requiring the public employer to engage in negotiations. The Court's review is for errors of law. PERB has, pursuant to Iowa Code Section 20.6(1), only the power to "administer the provisions of this chapter."

> "Whether a proposal is a mandatory subject of collective bargaining, as defined by Iowa Code Section 20.9, has not been explicitly vested in PERB's discretion. (citation omitted). Therefore, our review is for correction of errors at law."

Iowa Code Section 17A.19(10)(e). *Waterloo Education Association v. Public Employment Relations Board*, 740 N.W.2d 418, 420 (Iowa 2007).

C. Argument

1. A reasonable interpretation of the term "base wages" is that a base wage proposed for every individual member of the bargaining unit is a mandatory subject of bargaining.

A reasonable interpretation of the term "base wages" is that a base wage proposed for every individual member of the bargaining unit is a mandatory subject of bargaining.

PERB, as affirmed by the District Court, defined the term "base wages" in such a manner as to deprive the term of any substantial meaning. PERB has defined "base wages" as "meaning the minimum (bottom) pay for a job classification…" (Declaratory Ruling p. 8) (App. 24). PERB also held "It is within the employer's prerogative to decree whether a classification or classifications (such as a social worker classification) or series of classifications will exist…" (Declaratory Ruling p. 15) (App. 31). "The Employer is under no obligation to bargain over whether a given job classification will exist…" (Declaratory Ruling p. 10) (App. 26). PERB further held that the employee organization cannot negotiate the work to be performed in return for the wage rate requested i.e. hours to be worked, holidays and vacations. (Declaratory Ruling p. 11) (App. 27).

The consequence of PERB's interpretation is that the employee organization could only negotiate "base wages" for very few individuals in

the bargaining unit. In *Oskaloosa Community School District and Oskaloosa Education Association*, PERB held that in a bargaining unit of educators, the employee organization could only negotiate a wage rate for teachers with a bachelor's degree, step one, despite the fact that almost all teachers have more education and experience. 17 PERB 100823 at 9.

As an example, using PERB's analysis from *Oskaloosa*, due to the fact negotiations start in the fall of the year preceding the effective date of the new collective agreement and have to conclude by March 15th pursuant to Iowa Code Section 20.17(8)(b), it is unlikely that any of the new bargaining unit members who would be on a BA step one, would even be known at the time the contract is negotiated.

Iowa Code Section 20.1(1) states in relevant part, "That it is a public policy of the State to promote harmonious and cooperate relationships between government and its employees by permitting public employees to organize and bargain collectively…"

Iowa Code Section 20.3(4) defines an employee organization as "[an] organization of any kind in which public employees participate and which exist for the primary purpose of representing employees in their employment relations." Iowa Code Section 20.8 outlines that public employees shall have the right to…negotiate collectively through representatives of their own

choosing. Iowa Code Section 20.15 states that each individual member of the bargaining unit must vote to be represented by or to retain the certified bargaining unit. Iowa Code Section 20.17(1) places an affirmative duty on the employee organization to represent *each individual member* of the bargaining unit fairly and failure to do so breaches the employee organizations duty of fair representation.

Therefore, PERB's ruling renders the term "base wages" essentially meaningless and precludes the employee organization from negotiating on behalf of its members despite a statutory obligation to negotiate on behalf of each individual member of the bargaining unit, as well as undermining the public policy of the State of Iowa to permit collective bargaining. The obligation extends not only to new inexperienced members of the bargaining unit but to the vast majority of experienced members as well.

PERB has held that, "An employee organization certified under the Act has two major responsibilities; negotiating and administering collective bargaining agreements." *Iowa Western Community College Higher Education Association and Iowa Western Community College*, 76 PERB 702 at 4.

The Iowa Supreme Court, in *Norton v. Adair County*, recognized that the employee organization has obligation to fairly represent each and every individual member of the bargaining unit. 441 N.W.2d 347, 353 (Iowa 1989).

Under PERB's interpretation of the term "base wages" the employee organization cannot carry out the very purpose for which it was certified and conversely there would be little to no reason to belong to an organization that cannot negotiate the individual bargaining unit members "base salary."

The obligation on the part of the employee organization is to negotiate a base wage for each individual member of the bargaining unit, not merely the beginning step of each job classification. Employee organizations represent individuals not job classifications. Individuals not job classifications must vote to certify an employee organization as their bargaining representative. Iowa Code § 20.15(1)(b). Individuals not job classifications must vote to retain an employee organization. Iowa Code § 20.15(2)(b)(1). The obligation of the employee organization is to represent each individual fairly, not the beginning step of each job classification as unilaterally determined by the employer.

PERB's rationale for its interpretation of the term "base wages" is set forth in its decision in *Columbus Community School District and Columbus Education Association*. PERB reasoned that because the legislature utilized the term "base wages" instead of the term "wages" the new term must be given a more restrictive meaning. 17 PERB 100820 at 3. In an employment context it may be reasonable to assume that base wages is the negotiated pay for each

individual member of the bargaining unit's work (i.e. teacher or social worker) excluding additional renumeration such as bonuses or merit pay while the term "wages" may include total compensation. To that limited extent, PERB's definition has some rational basis.

PERB's conclusion, however, that "base wages" as a mandatory subject of bargaining may only be negotiated for those few employees at the minimum (bottom) pay for a job classification unilaterally determined by the employer, has no rational basis.

PERB reached its conclusion in *Columbus* by looking at definitions of the term "base" standing alone and unrelated to employment such "the base of a cliff, the base of a lamp…or a base camp for the mountain climbers." 17 PERB 100820 at 5. Clearly those definitions are unhelpful in defining "base wages" when those terms are read together in the employment context. PERB then goes on to extrapolate that base must mean only the beginning wage rate in each job classification unliterally determined by the employer. *Id.* at 6. Clearly there is no support for such a conclusion.

Chapter 20 provides just the opposite, the right and obligation of the employee organization is to negotiate for each individual member of the bargaining unit, not each job classification. Iowa Code § 20.16. The obligation extends not only to new unknown potential members of the bargaining unit at

the time the contract is negotiated, but also to all existing members of the bargaining unit. Thus, with or without reference to a formal salary schedule there is nothing to preclude the employee organization for proposing as a mandatory subject of bargaining a differing base salary for each of 50 members in the bargaining unit. There is nothing in the law that precludes an employee organization from proposing as a mandatory subject a differing wage rate for each individual member of the bargaining unit. As example, Mary Smith with ten years of experience as opposed to Tom Anderson with two years of experience. Chapter 20 from elections through negotiations of contracts, and the filing of a grievance focuses exclusively on the individual not, job classifications.

Therefore, even if PERB is correct in determining that the term "wages" would include one's total compensation including bonuses and merit pay, while "base wage" is limited to the individual's base compensation, PERB has erred in limiting the negotiation of base wages as a mandatory subject of bargaining for only new as opposed to all individual members of the bargaining unit.

2. PERB erred in determining that a proposal identifying the work to be done for the base wage requested is a non-mandatory subject of bargaining.

PERB went further in its holding as to those few individuals for whom the employee organization could negotiate. PERB found that the employee organization could not negotiate the work to be done for the base wage requested. PERB held that the proposal setting forth the hours to be worked and vacation and sick leave provided in return for the base wage requested is a non-mandatory subject of bargaining. (Declaratory Ruling p. 11) (App. 27).

Under PERB's ruling, an employee organization could propose an hourly wage rate of $13.00, but not $13.00 an hour for twenty-five hours, or $400.00, but not $400.00 per week, and not a proposal that identifies the number of hours per day and the weeks per year to be worked or identifies the amount of sick or vacation time. Such a ruling precludes the employee organization from negotiating the work to be performed for the base wage requested.

Again, the term "base wages" would have no reasonable meaning if the employee can propose only a dollar amount without also proposing the hours, vacations, holidays, etc. to be worked for the base wage requested. PERB attempts to justify its decision by stating in the declaratory order that to allow the employee organization to make such a proposal would allow

negotiation on non-mandatory subjects of bargaining such as hours, holidays, etc. (Declaratory Ruling p. 9-11) (App. 25-27). The amendments to Iowa Code Chapter 20.9 preclude the employee organization from independently negotiating and obtaining a ruling from an arbitrator on each subject in dispute such as holiday, hours, etc. However, including the work to be done (hours, holidays, etc.) is a necessary component of any wage or base wage proposal as the Iowa Supreme Court in *Waterloo Education Association v. Iowa Public Employment Relations Board* previously determined. PERB, alternatively, claims that its ruling is driven by Iowa Code Section 20.9(1) which in relevant part provides, "[m]andatory subjects in negotiations specified in this subsection shall be interpreted narrowly and restrictively."

The Court in *Waterloo* stated that, "…'wages' is subject to a relatively narrow construction in order to avoid an interpretation that renders subsequent items in the laundry list redundant and meaningless." *Waterloo*, 740 N.W.2d 418, 429 (Iowa 2007). Yet, the Court in *Waterloo*, even while applying a "narrow construction" adopted a common-sense interpretation of the term wages stating, "[i]t is only possible to rationally bargain for an honest day's pay if one can negotiate the boundaries and the contents of an honest day's work." *Id*. at 430.

The *Waterloo* Court also relied on dictionary definition that are equally applicable to base wages as they are to "wages." The only difference between the term "base wages" and "wages" is that the former excludes the additional compensation such as bonuses and merit pay that the latter includes. The Court referred to Black's Law Dictionary, which defines wages as "payment for labor or services usually based on time worked or quantity produced." *Id.*; citing Black's Law Dictionary 1573 Seventh Edition (1999).

Further, the *Waterloo* Court noted:

> "The employees economic interest in more pay for more work is precisely the kind of employee interest that leading commentators for decades have suggested should be subject to collective bargaining…"

Id.

Even under the definition of "base pay" in Roberts Dictionary Industrial Relations "base rate" is defined as "The pay for an employee for a fixed unit of time i.e. hour, day, etc. under peace rate is the amount of pay guaranteed for an hour or day." Base Rate, Roberts Dictionary of Industrial Relations Third Edition (1986). Further, as the Court in *Waterloo* noted, Meriam Webster Collegiate Dictionary defines wages as, "payment for labor or services on an hourly, daily, peace work basis." *Waterloo*, 740 N.W.2d 430.

Other states have defined the term "base wages" or synonymous wordage. Arizona has defined the term "base salary" as to mean "the amount

of compensation each member is regularly paid for personal services rendered to an employer before the addition of any extra monies, including overtime pay, shift differential pay, holiday pay, fringe benefit pay and similar extra payments." Ariz. Rev. Stat. Ann. § 38-881(43) (2017).

Delaware has restrictively defined the term "wages" as "compensation for labor or services rendered by an employee, whether the amount is fixed or determined on a time, task, piece, commission or other basis of calculation." Del. Code. Ann. tit. 19 § 1101(a)(5) (2018). Delaware further outlined that "benefits or wage supplements" means "compensation for employment other than wages, including, but not limited to, reimbursement for expenses, health, welfare or retirement benefits, and vacation, separation or holiday pay, but not including disputed amounts of such compensation subject to handling under dispute procedures established by collective bargaining agreements." Del. Code. Ann. tit. 19 § 1109(b) (2018). This secondary definition of "benefits or wage supplements" shows the restrictive but commonsensical definition of the term "wages."

Texas has determined the term "'base salary'" is synonymous with base pay and base wages and refers to the rate or amount of pay for a standard work period, job, or position, exclusive of additional payments, bonus, or

allowance." *O'Haver v. City of Lubbock*, 815 S.W.2d 915, 916 (Tex. App. 1991).

Further, precluding an employee organization from negotiating each individual's base wage for their work as a social worker or teacher and not allowing negotiation of the work to be done for the wage rate requested (i.e. wage rate of $500.00 per week for 37 ½ hours for work or $48,000.00 for forty-eight weeks in a calendar year) would be inconsistent with the common law rules of statutory construction set forth in Iowa Code Chapter 4 that apply to the interpretation of any term in a statute, "A just and reasonable result is intended" and "A result feasible of execution is intended." Iowa Code Section 4.4.

The rules of statutory construction contemplate a meaningful and reasonable interpretation of the words used in statute rather than a interpretation that renders the term (here base wages) meaningless. With that in mind, the Iowa Supreme Court has found that courts:

> "must place a reasonable construction on the statute which will best effect the purpose of the statute, rather than one which will defeat it…[t]he statute should not be construed so is to make any part of its superfluous unless no other construction is reasonably possible…[w]e will presume the legislature enacted each part of the statute for a purpose and intended that each part be given effect."

In the Interest of G.J.A., 547 N.W.2d 3, 6 (Iowa 1996) (internal citations omitted).

And that courts:

> "will not construe a statute in a way to produce impractical or absurd results…and we should not speculate as to the probable legislative intent apart from the wording used in the statute…we are required to interpret the language fairly and sensibly in accordance with the plan meaning of the words used by the legislature."

Carolan v. Hill, 553 N.W.2d 882, 887 (Iowa 1996) (internal citations omitted).

PERB has held in its ruling that it believes the legislature wished to preclude the employee organization from negotiating the work to be done in exchange for the base wage negotiated without citing any authority. (Declaratory Ruling p. 8-13) (App. 24-29). The Iowa Supreme Court has rejected such speculation.

The Court concluded:

> "Generally, we are to use rules of statutory construction as aids in determining legislative intent only when the terms of a statute are ambiguous. We are to give precise and unambiguous language its plain and rationale meaning as used in conjunction with the subject considered. We are therefore not to speculate as to the probable legislative intent apart from the wording used in the statute. We must look to what the legislature said, rather than what it should or might have said."

Johnson v. Johnson, 564 N.W.2d 414, 417 (Iowa 1997).

Finally, PERB erred in trying to soften its ruling, holding the term base wages virtually meaningless by stating that the employee organization could always request information on the number of hours to worked, vacations, holidays, sick leave from the public employer and suggests that the public employer would have an obligation to provide such information. (Declaratory Ruling p. 12) (App. 28). PERB, however, concluded, "Hours, holidays, vacations, and leaves of absence are now permissive matters even within the scope of the mandatory subject of base wages and an employer is under no obligation to bargain over those subjects." (Declaratory Ruling p. 11) (App. 27). PERB's ruling is internally inconsistent. If the employer has no obligation to negotiate on the base wage proposal set forth herein the employer would have no obligation to identify in bargaining the hours to be worked, holidays, etc. PERB suggests that the employee organization could still seek and the employer would have an obligation to provide this information. (Declaratory Ruling p. 12) (App. 28). PERB cites to cases holding that the employee organization may request and the employer has an obligation to supply information necessary to bargain a collective agreement. (Declaratory Ruling p. 12) (App. 28). While that is true, there is no case law to support the proposition that an employer would have to supply information on subjects of

bargaining which are under its exclusive control and on which it has absolutely no duty to bargain. Further, even if correct, the outcome would be unworkable. Bargaining in Iowa begins in the late fall of the year prior to the implementation of the collective bargaining agreement on the following July 1st and must be complete by March 15th. PERB is incorrect in suggesting where the employer refused to supply the information that a prohibited practice complaint could be filed and resolved in that length of time. Prohibited practice complaints start with an administrative law judge and then are appealable to the full board and from there on to district court and the Iowa Supreme Court. The process takes from one to three years and would not provide the employee organization with effective relief prior to the deadline of coming to an agreement for the collective bargaining agreement.

Therefore, PERB erred in determining that a proposal identifying the work to be done for the base wage requested is a non-mandatory subject of bargaining.

II. PERB erred in determining that the employee organization may only bargain for new members of the bargaining unit who would be on step one of the job classification and not for the vast majority of experienced individual members of the bargaining unit.

The proposal on which PERB was asked to rule is as follows: The employee organization represents individual employees in four different pay

grades with pay grades one requiring the least amount of time on the job and pay grade four the most. Each increased step reflects one more year of service (there are no seniority rights) and annual base wage is as follows. Each individual in the bargaining unit would be in a separate and distinct pay grade with one to five years of service.

Pay Grade 1:
Year 1 - $30,000
Year 2 - $32,000
Year 3 - $35,000
Year 4 - $40,000
Year 5 - $46,000

Pay Grade 2:
Year 1 - $35,000
Year 2 - $38,000
Year 3 - $41,000
Year 4 - $45,000
Year 5 - $50,000

Pay Grade 3:
Year 1 - $40,000
Year 2 - $44,000
Year 3 - $48,000
Year 4 - $52,000
Year 5 - $56,000

Pay Grade 4:
Year 1 - $45,000
Year 2 - $49,000
Year 3 - $54,000
Year 4 - $60,000
Year 5 - $66,000

PERB was asked to state whether Proposal III is a mandatory, permissive or prohibited subject of bargaining.

PERB concluded that it was the employer's prerogative to decide whether a classification or classifications will exist and only the minimum step for each classification is a mandatory subject of bargaining, therefore leaving the other steps in the classifications as a permissive subject of bargaining. (Declaratory Ruling p. 14-15) (App. 30-31). This is in clear error.

A. <u>Preservation of Error</u>

UE, in its Request for Declaratory Ruling with PERB requested a determination on its proposals submitted. PERB in turn ruled on the proposals submitted by PERB. UE timely filed a petition for judicial review in Polk County District Court pursuant to Iowa Code 17A and then timely appealed from the District Court's determination. Therefore, error has been preserved.

B. <u>Scope and Standard of Review</u>

The relief sought is that the Court hold that the proposals on which review was sought are mandatory subjects of bargaining, thus requiring the public employer to engage in negotiations. The Court's review is for errors of law. PERB has, pursuant to Iowa Code Section 20.6(1), only the power to "administer the provisions of this chapter."

> "Whether a proposal is a mandatory subject of collective bargaining, as defined by Iowa Code Section 20.9, has not been explicitly vested in PERB's discretion. (citation omitted). Therefore, our review is for correction of errors at law."

Iowa Code Section 17A.19(10)(e). *Waterloo Education Association v. Public Employment Relations Board*, 740 N.W.2d 418, 420 (Iowa 2007).

C. <u>Argument</u>

There is absolutely nothing in House File 291 to suggest that the employee organization can only negotiate a base wage for the very few individual members of the bargaining unit who would be at year one of the pay grade.

The Court in *Waterloo*, stated that "It is only possible to rationally bargain for an honest day's pay if one can negotiate the boundaries and the contents of an honest day's work" (See *Waterloo*, 740 N.W.2d at 430) for the term base wages to have meaning, a base wage proposal must include the right and obligation to negotiate for each individual member of the bargaining unit regardless of their experience – not just "new" employees.

The statute does not say negotiate "in good faith" on wages only for new or beginning employees with no experience, employees that would be on the first step of the job classification. The interpretation by PERB is at odds with the obligation to interpret all the words in the statute in a reasonable

manner that gives meaning to the statutory provision. By using PERB's interpretation, this would render the term base wages meaningless for most members of the bargaining unit, essentially it would be restricted to new hires with no experience, which would encompass only a small percentage of the bargaining unit. This statutory reading would lead to an absurd result. *See Iowa Ins. Institute v. Core Group of Iowa Ass'n for Justice*, 867 N.W.2d 58, HN 18 (Iowa 2015) (remarking that "[s]tatutes should not be interpreted in a manner that leads to absurd results").

As pointed out in Brief Point I there is some support for a conclusion that the term "wages" includes total compensation i.e. bonuses and merit pay, while the term "base wage" excludes the additional compensation and refers only to the basic wage requested for every individual member of the bargaining unit. The latter is at issue here. Employee organization has the right to represent each individual in the bargaining unit and the obligation to negotiate a base salary on behalf of every individual in the bargaining unit. The employee organization could not fulfil its responsibilities to negotiate only for the beginning pay for each job classification as unilaterally determined by the employer. Further, PERB's reliance in *Columbus Community School District*, 17 PERB 100820 at 2, on the definition of the word "base" standing alone "the base of the cliff or the base of the lamp" has

no application in determining reasonable meaning of words "base wages" when used together in an employment context. There is nothing in the statute that precludes an employee organization from proposing a base wage for each individual member of the bargaining unit and proposing a base wage rate for an individual unit member employed five years. As an example, Mary Smith at $50,000 while Tom Anderson who is going to be employed in his first year at $35,000. The employer is free of course to propose a differing wage rate and an entirely different structure, but that does not render the employee organizations proposal a non-mandatory subject of bargaining.

PERB's interpretation of base wages is at odds with all dictionary definitions of the term and the meaning given to the term by all other states that have considered the matter. The uniform interpretation set forth both in the dictionary definition and other states' interpretation is that the term refers to the base wage paid to the individual social worker or teacher excluding only additional compensation such as bonuses or merit pay.

PERB's interpretation would preclude the employee organization from carrying out the statutory obligation. Mostly, the responsibility that "[t]he employee organization certified as the bargaining representative shall be the exclusive representative for all public employees in the bargaining unit and shall represent all public employees fairly." Iowa Code Section 20.17(10). If

we followed PERB's interoperation, the employee organization would only be able to bargain for a select few in the bargaining unit, not all as prescribed in the statute.

Therefore, under the decision in *Waterloo*, and applying such interpretation, an employee organization has both the right and the obligation to negotiate a base wage for every step in each job classification in the bargaining unit and such a proposal is a mandatory subject of bargaining under "base wages."

III. PERB erred in determining that a proposal to pay employees a higher base wage for working the overnight shift (11:00 p.m. to 7:00 a.m.) is a permissive subject of bargaining.

The proposal on which PERB was asked to rule is as follows: Whether the following proposal is a mandatory, permissive or excluded subject of bargaining:

> The employee organization represents a group of individual employees working on a 11:00 p.m. to 7:00 a.m. work schedule established by the employer, for which it proposes an annual base wage of $55,000.00 with a one-hour lunch break and two fifteen-minute breaks.

PERB concluded that a proposal that the employer pay those employees working the night shift a different base wage then others employed in the same job classification is a permissive subject of bargaining. (Declaratory Ruling p. 16) (App. 32). This is in clear error.

A. Preservation of Error

UE, in its Request for Declaratory Ruling with PERB requested a determination on its proposals submitted. PERB in turn ruled on the proposals submitted by PERB. UE timely filed a petition for judicial review in Polk County District Court pursuant to Iowa Code 17A and then timely appealed from the District Court's determination. Therefore, error has been preserved.

B. Scope and Standard of Review

The relief sought is that the Court hold that the proposals on which review was sought are mandatory subjects of bargaining, thus requiring the public employer to engage in negotiations. The Court's review is for errors of law. PERB has, pursuant to Iowa Code Section 20.6(1), only the power to "administer the provisions of this chapter."

> "Whether a proposal is a mandatory subject of collective bargaining, as defined by Iowa Code Section 20.9, has not been explicitly vested in PERB's discretion. (citation omitted). Therefore, our review is for correction of errors at law."

Iowa Code Section 17A.19(10)(e). *Waterloo Education Association v. Public Employment Relations Board*, 740 N.W.2d 418, 420 (Iowa 2007).

C. Argument

Even under the definition of "base pay" in Roberts Dictionary Industrial Relations "base rate" is defined as "The pay for an employee for a fixed unit

of time i.e. hour, day, etc. under peace rate is the amount of pay guaranteed for an hour or day." Base Rate, Roberts Dictionary of Industrial Relations Third Edition (1986). Further, as the Court in *Waterloo* noted, Meriam Webster Collegiate Dictionary defines wages as, "payment for labor or services on an hourly, daily, peace work basis." *Waterloo*, 740 N.W.2d 430. Further, other states' interpretations of terms synonymous "base wage" shows that PERBs' interpretation is too restrictive.

Therefore, even when giving a restrictive determination of term "base wages" a proposal to pay employee working a night shift (11:00 p.m. to 7:00 a.m.) a higher rate of compensation falls well within the definition of base wages and this proposal should be mandatory.

IV. PERB erred in determining that an arbitrator may consider the wages paid in past collective bargaining agreements as consideration for determining an award on the subject of base wages.

PERB's conclusion that an arbitrator may consider past collective bargaining agreements in determining the pay increase to be given to employee is strictly and clearly in violation of Iowa Code Section 20.22(7)(A)(b)(1).

A. Preservation of Error

UE, in its Request for Declaratory Ruling with PERB requested a determination on its proposals submitted. PERB in turn ruled on the proposals submitted by PERB. UE timely filed a petition for judicial review in Polk County District Court pursuant to Iowa Code 17A and then timely appealed from the District Court's determination. Therefore, error has been preserved.

B. Scope and Standard of Review

Correction of errors at law is the correct scope of review for judicial review cases. Iowa R. App. P. 6.907.

C. Argument

Iowa Code Section 20.22(7)(A)(b)(1) states, "The arbitrator shall not consider the following factors: past collective bargaining agreement between the parties…" PERB's argument is at odds with what the legislature intended. PERB found in ruling that the legislature wished to reduce bargaining rights for public employees and the amount they could receive even if they took their case to arbitration. (Declaratory Ruling p. 20) (App. 36). While this may be true, neither PERB nor the Court can ignore a specific statutory provision that is not subject to interpretation but rather abundantly clear. Iowa Appellate Courts "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." *In re Det. Of Betsworth*, 711 N.W.2d 280, 283 (Iowa 2006). When the statute is ambiguous the Court may construe the statute. However, in this case when there is no ambiguity in the statute, the rules of statutory construction do not apply.

> "Generally, we are to use rules of statutory construction as aids in determining legislative intent only when the terms of a statute are ambiguous. We are to give precise and unambiguous language its plain and rationale meaning as used in conjunction with the subject considered. We are therefore not to speculate as to the probable legislative intent apart from the wording used in the statute. We must look to what the legislature said, rather than what it should or might have said."

Johnson, 564 N.W.2d 417.

Therefore, despite what the legislature may have intended, the statute is abundantly clear and does not allow the consideration by the interest arbitrator of past collective bargaining agreements.

CONCLUSION

In this case the Court is asked to interpret the term "base wages" as it appears in Iowa Code Section 20.9. PERB erred in interpreting "base wages" to mean that:

1. That the employee organization can only negotiate base wage for the beginning step on a job classification as said job classification is unilaterally determined by the employer.

2. The employee organization may not negotiate the work to be done for the wage rate requested i.e. the hours to be worked, vacation to be allowed, etc.

PERB's interpretation would render the term "base wages" virtually meaningless. Under PERB's interpretation the employee organization could only negotiate for new prospective members of the bargaining unit whose identity would be unknown at the time the contract was negotiated based on the fact public sector collective bargaining agreements in Iowa are negotiated beginning in the fall of the year prior to the expiration date of the contract and must be concluded by March 15th. The employee organization has a statutory obligation to negotiate on behalf of each individual member of the bargaining unit under 20.17(1). The obligation is to negotiate for and fairly represent each individual member of the bargaining unit, not the beginning step of each job classification as unilaterally determined by the employer.

PERB also erred in determining that the employee organization could not negotiate the work to be performed in return for the base wage requested for each individual member of the bargaining unit. The Iowa Supreme Court in *Waterloo*, even while applying a narrow and restrictive interpretation to the term wages, found that the work to be done in return for the wage rate

requested was a necessary component of any wage proposal. *Waterloo*, 740 N.W.2d at 430. Additionally, multiple dictionary definitions and the restrictive interpretations of a synonymous term to that of base wage by other states shows that PERB's definition is much too narrow and renders the term meaningless.

A reasonable interpretation of the term base wages would be the wage rate for each individual member of the bargaining unit for doing the basis job for which they were employed i.e. social work or teacher. Wages on the other hand, would reasonably include total compensation including bonuses and merit pay. However, every definition of base wage or wages must reasonably be interpreted to include the compensation for the job for which you were hired and the amount of work, hours, vacations, holidays, etc. that an individual employee is expected to do. Therefore, UE seeks a ruling from this Court reversing PERB and the District Court's findings and hold that the term "base wages" as appears in Iowa Code Section 20.9 as amended by House File 291 is interpreted to mean that:

1. An employee organization may propose, as a mandatory subject, a base wage for every individual employee in the bargaining unit; and

2. The employee organization may negotiate, as a mandatory subject, the work to be performed i.e. hours, vacations in return for the base wage rate proposed.

Lastly, PERB's conclusion that an arbitrator may consider past collective bargaining agreements in determining the pay increase to be given to employee is strictly and clearly in violation of Iowa Code Section 20.22(7)(A)(b)(1) and therefore their holding is invalid.

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 7,657 words (less than 14,000 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: August 21, 2018
Charles Gribble

CERTIFICATES OF FILING AND SERVICE

I hereby certify that I e-filed the Plaintiff-Appellant Page Proof Brief with the Electronic Document Management System with the Iowa Judicial Branch on August 21, 2018. The following counsel will be served by Electronic Document Management System:

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