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 REPLY BRIEF

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ARGUMENT

I. UE HAS THE RIGHT AND OBLIGATION TO NEGOTIATE A BASE WAGE FOR EVERY INDIVIDUAL MEMBER OF THE BARGAINING UNIT, NOT MERELY THOSE FEW EMPLOYEES ON THE FIRST STEP OF A JOB CLASSIFICATION AS UNILATERALLY DETERMINED BY THE EMPLOYER.

PERB, in its ruling and in its brief errs in focusing on job classification rather than the right of employees to negotiate and obligation of the employee organization to negotiate on behalf of all members in defining the term base wages. The result of PERB's flawed analysis is not merely a definition of the term that is narrow and restrictive, but one that renders the term virtually meaningless. The statutory obligation is to give each term a reasonable interpretation and one that is capable of attainment. *See* Iowa Code § 4.4.

The entire focus of the Public Employment Relations Act, Iowa Code Chapter 20, is on the rights of public employees to negotiate and the obligations of the employee organization to each individual member of the bargaining unit. Under Chapter 20, the public policy of the State of Iowa is to "… permit public employees to organize and bargain collectively…" Iowa Code Section 20.1(1). Employee organizations "exist for the primary purpose of representing employees in their employment relations." Iowa Code Section 20.3(4). Public employees have the right to "negotiate collectively through

representatives of their own choosing." Individual employees must vote to be represented by the bargaining unit. Iowa Code Section 20.17(1).

In *Norton v. Adair County*, 441 N.W.2d 347 (Iowa 1989) the Iowa Supreme Court recognized that the employee organization has the obligation to fairly represent each and every member of the bargaining unit. 441 N.W.2d at 353. A dispute over the wage that an individual member of the bargaining unit should receive is an issue over which the employee organization has an obligation to provide representation. *Sergeant Bluff-Luton Ed. Ass'n v. Sergeant Bluff-Luton Community School Dist*., 282 N.W.2d 144, 146 (Iowa 1979). This duty is further enumerated in Iowa Code Section 20.17(1), which specifically states, "[t]he employee organization certified as the bargaining representative shall be the exclusive representative of all public employees in the bargaining unit and shall represent all public employees fairly." Lastly, an individual member of the bargaining unit may sue the employee organization for breaching its duty of fair representation. *Brown v. Public Employment Relations Board*, 345 N.W.2d 88 (Iowa 1984).

Thus, PERB's definition of the term "base wages" as affirmed by the District Court, that the employee organization can only negotiate wages for those few, if any, employees on the first step of each job classification as unilaterally determined by the employer would nullify the rights of the public

employees to negotiate. Further, the employee organization could not fulfill its obligation to negotiate a base wage for every individual member of the bargaining unit.

The employee organization represents individual employees, not job classifications, in other words, the employee organization represents real people. Individual employees not job classifications must vote in sufficient numbers to be represented by the employee organization. *See* Iowa Code § 20.15(2)(a). Once the employee organization is certified, it then has the obligation to represent all employees in the bargaining unit, not merely those few potential members of the unit who would be at the first step of a job classification. The failure to negotiate a base wage for every individual employee breaches the employee organization's obligations under the law. Therefore, PERB erred as a matter of law in interpreting the term base wages in such a fashion as to preclude public employees from engaging in collective bargaining contrary to the public policy of the state and precluding the employee organization from fulfilling its statutory mandated obligation of negotiating for each individual member of the bargaining unit.

II. PERB ERRED IN DEFINING THE TERM BASE WAGE IN SUCH A MANNER AS TO RENDER THE TERM VIRTUALLY MEANINGLESS CONTRARY TO THE OBLIGATION TO INTERPRET EACH TERM IN A REASONABLE MANNER AND IN A MANNER THAT IS CAPABLE OF ATTAINMENT.

PERB, in its brief, states that UE is incorrect in arguing that there is an obligation to give the term base wages a reasonable interpretation. (PERB Br. at 24). When enacting a statute, it is presumed that: "a just and reasonable result is intended." Iowa Code Section 4.4(3). Iowa Courts "avoid interpreting a statute in such a way that portions of it become redundant or irrelevant." *T & K Roofing Co. v. Iowa Dep't of Educ.,* 593 N.W.2d 159, 162 (Iowa 1999). "We look for a reasonable interpretation that best achieves the statute's purpose and avoids absurd results." *State v. Gonzalez,* 718 N.W.2d 304, 308 (Iowa 2006) (citing *Harden v. State,* 434 N.W.2d 881, 884 (Iowa 1989)). Therefore, a reasonable interpretation of base wages is required and PERB is incorrect in stating otherwise.

PERB further errs in stating that neither the agency or the Court is to consider the consequences of a particular interpretation. (PERB Br. at 27-28). "If a statute is ambiguous, the Court, in determining the intention of the legislature, may consider among other considerations: "the consequence of a particular construction" and the "preamble or statement of policy." Iowa Code

Section 4.6(5), (7). The public policy of the state is to allow employees to engage in collective bargaining through an employee organization and the obligation of the employee organization is to negotiate a base wage rate for each individual in the bargaining unit for the work to be performed. See Iowa Code Sections 20.1(1) and 20.3(4). PERB as affirmed by the District Court has held that UE can only negotiate a base wage for the beginning step of job classifications as unilaterally determined by the employer (Declaratory Ruling at 15) (App. 31) and could not negotiate the work to be done (hours per day or per week, vacation time, etc.) in return for the base wage proposed (Declaratory Ruling at 11) (App. 27). UE's interpretation gives meaning to the term "base wages" while PERB's interpretation renders the term virtually meaningless. Both "public policy" and "the consequence of a particular construction" support UE and not PERB's interpretation of "base wages."

Contracts in Iowa are negotiated in the fall of the year prior to the contract expiration and must be concluded by March 15th of the year in which the contract is to go into effect. Iowa Code Section 20.17(8)(b)(9). Unresolved issues are resolved through arbitration. Therefore, negotiations must be complete or an arbitrator's award must be rendered prior to March 15th. The Iowa Supreme Court in *City of Des Moines v. Public Employment Relations Board* noted that this timeline must be strictly followed in order to allow a

public employer, "…to formulate a budget and carry out its provisions." *City of Des Moines*, 375 N.W.2d 753, 761 (Iowa 1979).

> The conclusions reached here simply put the burden on the party who will most likely feel the need for arbitration (generally the employee organization) to see that negotiation and impasse procedures are undertaken in a timely manner. There is nothing in the Act which provides starting negotiations earlier in the year so as to assure the issues are sufficiently formulated to make good use of the impasse procedures beginning in mid-November.

City of Des Moines, 375 N.W.2d at 761

Therefore, at the time that negotiations take place (November through March) the employee organization would likely not know of any employee who would be on the first step of the job classification beginning July 1st. All the existing members of the bargaining unit would at a minimum be moving to step 2 or higher in the job classification. Thus, under PERB's interpretation, the employee organization could not negotiate for any existing member of the bargaining unit and could only negotiate a beginning wage rate for a few possible unknown/prospective members of the bargaining unit.

PERB further argues that the employee organization, cannot, as a mandatory subject negotiate the work to be done in exchange for the wage rate requested. PERB argues that a contrary ruling would allow the employee organization to negotiate what are now non-mandatory subjects of bargaining such as hours, vacations and sick leave. (PERB Br. at 27). The employee

organization, however, is not proposing to negotiate separate contract articles or said subjects. For example, the employee organization cannot negotiate a separate hours article setting out the beginning and ending times of the work day as they previously could. The employee organization cannot negotiate a vacation article which provides for the manner in which vacation is selected. A sick article provision cannot be negotiated which states to whom the request for leave must be submitted, how long in advance it must be submitted, or when a physician note is required. All those matters would now be within the unilateral control of the employer. Thus, interpreting the term base wages to allow the employee organization to submit a proposal which included the work to be done for the wage rate requested setting forth the hours to be worked and the amount of vacations, holidays, sick leave, etc. does not equate to negotiating a separate article on these proposals. As the Iowa Supreme Court in *Waterloo Education Association* stated, "[I]t is only possible to rationally bargain for an honest day's pay if one can negotiate the boundaries and contents of an honest days work." *Waterloo Education Association v. Public Employment Relations Board*, 740 N.W.2d 418, 430 (Iowa 2007).

Iowa Code Section 20.9(1) in relevant part provides, "[M]andatory subjects in negotiations specified in this subsection shall be interpreted narrowly and restrictively." The phrase "narrow and restrictive" however does

not allow the term "base wages" to be interpreted so as to render the term meaningless.

This Court in *Waterloo* further held 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* at 429. 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 contents of an honest days work." *Id*. at 430.

A reasonable, meaningful and yet limited interpretation of base wages would include each individual bargaining unit member's base pay as a teacher, social worker, etc., exclusive of any additional benefit such as bonus, benefits, overtime or any additional forms of compensation. This definition while giving a reasonable interpretation of the term does not equate "base wages" to "wages" as PERB alleges in it's brief. (PERB Br. at 26). The definition of the term "base wages" in an employment context is well established. UE as well as the intervenor, Iowa State Education Association, have both set forth many generally accepted dictionary definitions of base wages and the distinction between wages and base wages that are equally applicable here. Further, UE identified the manner in which other states have 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 payment." Ariz. Rev. Stat. Ann. § 38-881(43) (2017); *see also* definitions adopted by Texas in *O'Haver v. City of Lubbock*, 815 S.W.2d 915, 916 (Tex. App. 1991) ("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.")

Additionally, Iowa Code Section 91A, Iowa's Wage Payment law has defined "wages" to mean compensation owed by an employer for: a) labor or services rendered by an employee, whether determined on a time, task, piece, commission or other basis of calculation. b) Vacation, holiday, sick leave and severance payment… c) Any payments to the employee or to a fund for the benefits of the employee, including but not limited to payments for medical, health, hospital, welfare, pension, or profit sharing, which are due to an employee…" Iowa Code § 91A.2(7). A definition of "base wage" to be consistent with the definition cited above would include the matters set forth in Iowa Code Sections 91A.2(7)(a) and 91A.2(7)(b) while excluding those matters in Section 91A.2(7)(c).

The definitions of base wages relied upon by PERB for "base wages" such as the base of a lamp (*see Columbus Community School District and Columbus Education Association*, 100820, p. 5 (PERB 2017)) have no application to employment law. The definition of "base wages" in the employment context is clear and without ambiguity. Thus, if the Court concludes that UE's definition of base wages merely reflects dictionary definitions and existing case law it need not go further. Assuming without agreeing that the term is ambiguous, and applying the rules of statutory construction set forth in Iowa Code Chapter 4, the term "base wage" must be given a meaningful, as opposed to a meaningless interpretation. Further, "when a statute does not provide a helpful definition of a disputed term, courts should not imply a meaning that is broader than the common-law definition. *Renda v. Iowa Civil Rights Com'n*, 784 N.W.2d 8, 22 (Iowa 2010) (Justice Cady dissenting) (citing *Nationwide Mut. Ins. Co. v. Darden*, 503 U.S. 318, 322–23, (1992)). Therefore, definition of "base wages" must be broad enough to reflect the public policy of the state and allow an employee organization to fulfill its obligations under statute to negotiate a wage rate for each individual member.

Finally, PERB further erred in holding the term base wages virtually meaningless by exclaiming 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. PERB, however, concluded, "Hours, holidays, vacations, and leaves of absence are now permissive matters not within the scope of mandatory subject of base wages and an employer is under no obligation to bargain them. (Declaratory Ruling at 11) (App. 27). PERB suggests that the employee organization could still seek and the employer would have an obligation to provide this information. (Declaratory Ruling at 12) (App. 28).

PERB, in ruling on UE's proposals cited to *Greater Community Hosp. v. Public Employment Relations Board*, (Declaratory Ruling at 12) (App. 28). which found "Iowa Code section 20.10(1) imposes a duty upon public employers and public employees to "negotiate in good faith." This duty carries with it an obligation on the employer's part to supply the union with information relevant and necessary to effectively represent the employees in contract negotiations." 553 N.W.2d 869, 871 (Iowa 1996). While this 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 is has absolutely no duty to bargain.

Further, even if correct, the outcome would be unworkable. As has been explained, bargaining in Iowa usually begins in November 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 (hereinafter PPC) could be filed and resolved in that length of time. PPC's start with an administrative law judge and then are appealable to the full PERB 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. Therefore, PERB errored in rendering the definition of "base wages" as meaningless.

Thus, the Court is asked to define the term base wages to allow the employee organization as a mandatory subject to:

1. Negotiate a base wage rate for each individual member of the bargaining unit (social worker, etc.) exclusive of any additional compensation such as overtime, merit pay, or bonuses; and
2. Allows the employee organization to propose the work to be done i.e. hours, vacation, sick leave, etc. in exchange for the wage rate requested.

CONCLUSION

In summation, the Public Employment Relations Board's interpretation/definition of the term "base wages" heavily restricts the rights of public employees to negotiate collectively and the obligation of the employee organization to represent each and every individual in the bargaining unit. PERB's interpretation is not based upon current precedent or common law legal definitions, and would render the term "base wages" meaningless. Therefore, PERB's interpretation as a matter of law must fail. This Court is respectfully asked to find the following:

1. 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.
3. 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."
4. 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.

5. 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.

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/s/ *Charles Gribble*
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Charles Gribble