IN THE SUPREME COURT OF IOWA

NO. 18-0505

UNITED ELECTRICAL, RADIO, & MACHINE WORKERS OF AMERICA,
Petitioner-Appellant,

vs.

IOWA PUBLIC EMPLOYMENT RELATIONS BOARD,
Respondent-Appellee,

and

STATE OF IOWA and BOARD OF REGENTS,
Intervenors.

APPEAL FROM THE IOWA DISTRICT COURT OF POLK COUNTY
HON. DOUGLAS F. STASKAL

BRIEF OF *AMICUS CURIAE** IOWA STATE EDUCATION ASSOCIATION

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IDENTITY AND INTEREST OF AMICUS CURIAE

The Iowa State Education Association (hereinafter "ISEA") maintains a substantial interest in the outcome of these proceedings. Along with its many affiliated local associations, the ISEA represents hundreds of bargaining units across the state of Iowa which are composed of individuals employed by K-12 public school districts, area education agencies, and community colleges. Legislative amendments made to Iowa Code Chapter 20, the *Public Employment Relations Act*, and enacted on February 17, 2107, directly impact the rights of members of the ISEA and its affiliated local associations to engage in collective bargaining.

These proceedings raise significant issues of interpretation of these recent amendments to Iowa Code Chapter 20, specifically the meaning and application of the term "base wages," the only remaining mandatory topic of bargaining for non-public safety employees. The ISEA was a party to two central and influential cases, *Columbus Education Association*, 2017 PERB 100820, and *Oskaloosa Education Association v. PERB*, CVCV054286 (Iowa Dt. Ct. filed Jan. 26, 2018), in which PERB and the Iowa District Court previously interpreted changes made to the scope of public sector bargaining. As such, the ISEA maintains a substantial interest in the issues raised in this appeal.

STATEMENT OF THE CASE

The United Electrical, Radio, & Machine Workers of America (hereinafter "UE") appeals a decision by the Iowa District Court for Polk County affirming a Declaratory Ruling issued by the Iowa Public Employment Relations Board (hereinafter "PERB"). The matter relates to the negotiability of collective bargaining proposals proffered by the UE and governed by the Iowa Public Employment Relations Act ("PERA" or "Chapter 20"), Iowa Code chapter 20 (2017).

Iowa Code chapter 20 governs collective bargaining between public employee organizations and public employers in the state of Iowa. *Decatur Cnty. v. Pub. Emp't Relations Bd.*, 564 N.W.2d 394, 396 (Iowa 1997). Iowa Code section 20.9 defines the scope of bargaining, "creat[ing] two categories of negotiable subjects: (1) mandatory subjects that 'shall' be negotiated by the parties, and (2) permissive subjects that the parties 'mutually agree' to negotiate." *Id.* This appeal involves various pay provisions of a collective bargaining proposal advanced by the UE during collective bargaining with the State of Iowa. The issue is whether the pay provisions advanced by the UE come under a mandatory subject of bargaining or whether they are merely permissive. "This distinction is important to the parties involved because when a topic is mandatory, they

must negotiate on it, and failure to resolve the issue can lead to final binding arbitration." *Prof'l Staff Ass'n of Area Educ. Agency 12 v. Pub. Emp't Relations Bd.*, 373 N.W.2d 516, 518 (Iowa Ct. App. 1985).

The Iowa State Education Association (hereinafter "ISEA") supports the UE's challenge of the PERB's interpretation of recent changes to the scope of public sector collective bargaining and argues herein the PERB erred in finding permissive pay proposals which differentiate base wages according to an employee's experience on the job.

STATEMENT OF THE ARGUMENT

The District Court, affirming the PERB, held that the mandatory subject of bargaining, "base wages," encompassed only negotiations over a hiring or entry-level wage per employer-defined job classification. The District Court and PERB deemed permissive any additional steps in a pay proposal differentiating base wages according to a bargaining unit member's experience on the job. This interpretation of "base wages" is reversible error. While the term "base wages" may mean the lowest guaranteed wage, the term does not foreclose bargaining of base wages by groupings of similarly situated employees or for individual members of the bargaining unit. In error, the District Court and PERB have effectively precluded bargaining for the vast majority of bargaining unit members.

ARGUMENT

The Court is asked to consider the negotiability of collective bargaining proposals made by the UE. The UE contends the proposals fall within the only remaining mandatory subject of bargaining "base wages." The ISEA agrees that the PERB has erred in its interpretation and application of base wages.

A. Changes to the Scope of Bargaining Made by House File 291

House File 291 was enacted upon the signature of Governor Terry Branstad on February 17, 2017, making drastic changes to Iowa's public sector collective bargaining system which was established more than forty years before. *See* H.F. 291, 87th Gen. Assemb., Reg. Sess., 2017 Iowa Acts ch. 2 (Iowa 2017). Employee organizations favored by the amendment, those representing bargaining units in which at least thirty percent of the members are "public safety employees," retained a substantially similar scope of bargaining to that which all public employees had enjoyed for more than forty years under the PERA. Public safety employees retained broad rights to bargain "wages, hours, vacations, insurance, holidays, leaves of absence, shift differentials, overtime compensation, supplemental pay, seniority, transfer procedures, job classifications, health and safety matters, evaluation procedures, procedures for staff reduction, in-service training,

grievance procedures for resolving any questions arising under the agreement, and other matters mutually agreed upon." H.F. 291, 2017 Iowa Acts ch. 2, § 6. Non-public safety employees, on the other hand, suffered the loss of significant bargaining rights and are now limited to bargaining by right to only "base wages and other matters mutually agreed upon." *Id*. (compare Iowa Code § 20.9 (2017) prior to amendment). House File 291 fails to define "base wages," a term that is completely new to public sector bargaining in Iowa.

B. Principles of Negotiability

When PERB determines the negotiability of a proposal, "it decides only whether a subject is a mandatory topic of bargaining—not whether a specific proposal is substantively meritorious." *AFSCME Iowa Council 61 v. Iowa Pub. Emp't Relations Bd.*, 846 N.W.2d 873, 879 (Iowa 2014). "In the same way, on appeal," the court will "not pass in any way on the merits" of a negotiability dispute. *Id*. The court only addresses the question whether the disputed topic is one that "must be determined, if possible, by the parties themselves through good faith negotiations and in the event of impasse, through binding arbitration as provided in PERA." *Id*.

In *AFSCME Iowa Council 61 v. Iowa Public Employment Relations Board*, the Iowa Supreme Court most recently described "the proper test for

determining whether a proposal is subject to mandatory bargaining under section 20.9," which was previously decided in *Waterloo Education Association v. Iowa Public Employment Relations Board*, 740 N.W.2d 418 (Iowa 2007), commonly known as *Waterloo II*. *AFSCME Iowa Council 61*, 846 N.W.2d at 880 (quoting *Waterloo II*, 740 N.W.2d at 428). The PERB first "attempts to identify the proposal's 'predominant purpose.'" *AFSCME Iowa Council 61*, 846 N.W.2d at 880 (quoting *Waterloo II*, 740 N.W.2d at 427, 429). In doing so, the PERB's primary concern is "determining what the employer would be bound to do if a proposal were taken to arbitration and incorporated into a collective bargaining agreement." *AFSCME Iowa Council 61*, 846 N.W.2d at 880 (quoting *State v. Pub. Emp't Relations Bd.,* 508 N.W.2d 668, 675 (Iowa 1993). A proposal may not "incidentally involve" a mandatory topic of bargaining; the mandatory topic must be the "predominant subject." *AFSCME Iowa Council 61*, 846 N.W.2d at 880 (quoting *Waterloo II*, 740 N.W.2d at 431).

Once the PERB identifies the proposal's predominant purpose, "it next asks if that subject is 'definitionally within the scope' of a topic listed in Iowa Code section 20.9." *AFSCME Iowa Council 61*, 846 N.W.2d at 880 (quoting *Waterloo II*, 740 N.W.2d at 425). If PERB is able to answer that question affirmatively, the proposal is indeed a mandatory subject of

bargaining, "subject only to the limitation that proposals are not subject to collective bargaining if they are "preempted or inconsistent with any provision of law." *Id*. (quoting *Waterloo II*, 740 N.W.2d at 429).

The definitional exercise described in *AFSCME Iowa Council 61* remains relevant to the Court's analysis today, with one important exception. In *AFSCME Iowa Council 61*, the Court noted that a Section 20.9 topic may not be "subject to the narrowest possible interpretation," but must be given "its common and ordinary meaning." *AFSCME Iowa Council 61*, 846 N.W.2d at 879 (quoting *Waterloo II*, 740 N.W.2d at 429-430). Upon enactment of House File 291, "[m]andatory subjects of negotiation specified in [Section 20.9] shall be interpreted narrowly and restrictively." H.F. 291, 87th Gen. Assemb., Reg. Sess., 2017 Iowa Acts ch. 2, § 6 (Iowa 2017). This legislative amendment upends the determination by the Iowa Supreme Court in *Waterloo II* that the mandatory subjects of bargaining listed in Chapter 20 should be given their "common and ordinary" meaning. *Waterloo II*, 740 N.W.2d at 429-430. As such, the two-part test affirmed in *AFSCME Iowa Council 61* must now be conducted with a view toward narrow and restrictive construction.

C. Definition of Base Wages

Public sector employees have maintained the right to bargain collectively since PERA was enacted in 1974. Until February 17, 2017, public sector employees maintained the right to bargain a laundry list of topics, including "wages." Iowa Code § 20.9 (2017). Chapter 20 bargaining practices, bargaining history, and legal precedent predating the enactment of House File 291 were all developed under a system in which "wages" was a mandatory subject of bargaining. House File 291 created a very different system. Non-public safety employees covered by Chapter 20 may now demand bargaining of only "base wages." *See* H.F. 291, 87th Gen. Assemb., Reg. Sess., 2017 Iowa Acts ch. 2, § 6 (Iowa 2017). "Wages" are no longer a mandatory subject of bargaining. *Id.* (compare Iowa Code § 20.9 (2017) prior to amendment). "Wages" are now a permissive subject which may be bargained, but only by mutual consent of the parties. H.F. 291, 2017 Iowa Acts ch. 2, § 6.

In its first negotiability ruling following the enactment of House File 291, *Columbus Community School District*, 2017 PERB 100820, PERB defined "base wages" as "the minimum (bottom) pay for a job classification, category or title, exclusive of additional pay such as bonuses, premium pay, merit pay, performance pay or longevity." *Columbus Cmty. Sch. Dist.*, 2017

PERB 100820 at 5. In reaching this definition, PERB considered the following dictionary definitions:

> Webster's definitions of "base" include "the bottom of something considered as its support: FOUNDATION," "the fundamental part of something: GROUNDWORK, BASIS" and "the starting point or line for an action or undertaking." *Merriam-Webster's Collegiate Dictionary* (10th ed. 1994). See also
>
> https://www.merriam-webster.com/dictionary/base.
>
> In the American Heritage Dictionary of the English Language, the definitions of "base" include "the lowest or bottom part: the base of a cliff, the base of a lamp" and "situated at or near the base or bottom: a base camp for the mountain climbers."
>
> https://ahdictionary.com/word/search.html?q=base.
>
> Similarly, the Dictionary.com definition includes "the bottom support of anything; that on which a thing stands or rests: *a metal base for the table*," and "the bottom layer or coating, as of makeup or paint." www.dictionary.com/browse/base?s=t.

Id. at 4-5.

At the outset of its analysis of the new term "base wages," PERB concluded "the legislature intended to 'significantly narrow the prior scope of bargaining for non-public-safety bargaining units and that the new topic

of 'base wages' must be given a narrower interpretation than that which has been given to 'wages.'" *Id*. at 4. This must be the case as "[t]he legislature is presumed to know the prior construction of terms in the original act, and an amendment substituting a new term or phrase for one previously construed indicates . . . a different interpretation should be given the new term or phrase." *Iowa Farm Bureau Fed'n v. Envtl. Prot. Comm'n*, 850 N.W.2d 403, 434 (Iowa 2014). The Iowa Legislature must be presumed to have known the prior construction of the term "wages" and intended the term "base" to modify the foregoing term and create a new subset of the original subject category. As such, the Court's precedent defining "wages" is applicable.

The term "wages" was discussed by the Iowa Supreme Court most recently in *Waterloo Education Association v. Iowa Public Employment Relations Board*, 740 N.W.2d 418 (2007) (*Waterloo II*). The court relied on the following definitions:

> *Black's Law Dictionary* defines "wages" as "[p]ayment for labor or services, usually based on time worked or quantity produced." *Black's Law Dictionary* 1573 (7th ed. 1999). *Merriam-Webster's Collegiate Dictionary* defines wages as payment for labor or services on an "hourly, daily, piecework basis." *Merriam-Webster's Collegiate*

Dictionary 1322 (10th ed. 2002).

Waterloo II, 740 N.W.2d at 430. The subject of bargaining, "wages," is well-defined in case law as pay for services rendered. *Id.* (proposal for wages "simply seeks to introduce an element of piecework pay into the school district's wage structure" and is an "economic reward based upon services rendered"); *see also Waterloo Cmty. Sch. Dist. v. Pub. Emp't Relations Bd.*, 650 N.W.2d 627, 633 (Iowa 2002) ("a specific sum or price paid by an employer in return for services rendered by an employee"); *Fort Dodge Cmty. Sch. Dist. v. Pub. Emp't Relations Bd.*, 319 N.W.2d 181, 183-184 (Iowa 1982) ("wages would not include payment for services not rendered or labor not performed").

Certainly, the Iowa Legislature intended "base wages" to be a subsection, component, or part of "wages." "Effect must be given, if possible, to every word, clause and sentence of a statute. It should be construed so that effect is given to all its provisions and no part will be inoperative or superfluous, void or insignificant." *Fort Dodge v. Pub. Emp't Relations Bd.*, 275 N.W.2d 393, 397 (Iowa 1979). The fighting issue in this matter is the definition of that subsection, component, or part of "wages."

The term "base wages" is generally understood as a minimum fixed amount of money paid to an employee by an employer in return for services rendered in the position held. Dictionary definitions have been regularly used to aid the court's interpretation of the subjects of bargaining. *Waterloo II*, 740 N.W.2d at 430. *BusinessDictionary.com* defines "base salary" as

> a fixed amount of money paid to an employee by an employer in return for work performed. Base salary does not include benefits, bonuses or any other potential compensation from an employer. Base salary is paid, most frequently, in a bi-weekly paycheck to an exempt or professional employee. In most years, an employee's base salary is paid in 26 even paychecks over the course of the year.

BusinessDictionary.com, http://www.businessdictionary.com/definition/base-salary.html (last visited June 25, 2018). *MBASkool* defines "base wage rate" as "the minimum fixed amount of money which a worker is entitled to be paid by his employer. It excludes the additional benefits like bonuses, allowances, or any such compensation." *MBASkool*, http://www.mbaskool.com/business-concepts/human-resources-hr-terms/7339-base-wage-rate.html (last visited June 25, 2018). *Dictionary.com* defines "base pay" as "pay received for a given work period, as an hour or week, but not including additional pay, as for overtime work." *Dictionary.com*,

http://www.dictionary.com/browse/base-pay (last visited June 25, 2018). *Merriam-Webster* defines "base pay" as "a rate or amount of pay for a standard work period, job, or position exclusive of additional payments or allowances." *Merriam-Webster Dictionary*, available at https://www.merriam-webster.com/dictionary/base%20pay (last visited June 25, 2018).

Base wages constitute an employee's regular wages paid on a periodic schedule. While base wages are those regular and expected wages paid to the employee, wages beyond base wages are more speculative in nature and merely potential income, such as bonuses, performance pay, incentive pay or overtime pay. As a subsection of "wages," "base wages" must necessarily be the minimum, lowest (bottom), starting point for pay for services rendered by a bargaining unit member. Base wages are merely the "base" to which additional wages such as merit pay, premium pay, or overtime may be added if and when the appropriate conditions are met. Notably, wages and base wages are not definitionally limited to a job classification, title or category set by the employer.

D. Predominant Purpose of Proposal III is Base Wages

The first step in determining the negotiability of a collective bargaining proposal is a "definitional exercise." *Waterloo II*, 740 N.W.2d at 429. In order to be a mandatory subject of bargaining, a proposal must have as its predominant purpose the "base" or "minimum" wages bargaining unit employees will receive for services rendered. Under the UE's Proposal III, base wages for bargaining unit members, or the minimum, fixed amount employees can expect to see in their regular paychecks in return for services rendered in the position held, have been calculated based upon experience on the job. Pay grades differentiate base wages for each bargaining unit member based on their level of experience. The proposal does not dictate the qualifications or level of experience required for bargaining unit positions, so as to usurp the employer's exclusive power in these areas. This pay grade structure is merely a matrix for determining each employee's regular, set, minimum base wages, paid on a periodic schedule, and reflecting the value of the employee to the employer. These regular wages do not include *additional* income such as bonuses, incentive pay, merit pay, performance pay or overtime. Such additional types of compensation share the common characteristic of not being fixed, but variable, and dependent upon providing additional services to the employer or are a reward for

something more than the standard service expected beyond the regular workday. *See Waterloo Cmty. Sch. Dist. v. Pub. Emp't Relations Bd.*, 650 N.W.2d 627, 634 (Iowa 2002) (a teacher's regular workday is the equivalent of a shift).

The Court has previously determined that an economic reward for services of the employee is "wages." *Id.* at 633. By extension, base wages are the lowest minimum economic reward an employee receives for services rendered. Negotiation of wages has never been limited to a job classification, title or category, so as to prevent bargaining for portions of the bargaining unit.

In *Waterloo II*, an overload proposal "provided that elementary teachers who teacher more than three hundred minutes per day as part of regular work assignments 'shall receive additional compensation'" and "'[s]econdary and middle school teachers who are assigned to teach six (6) classes per day' were also entitled to additional compensation" at "'the employee's hourly proportionate per diem rate.'" *Waterloo II*, 740 N.W.2d at 419. The Iowa Supreme Court found the proposal to be a mandatory subject of bargaining as wages. The Court stated, "[a]t its core, the proposal simply seeks to introduce an element of piecework pay into the school district's wage structure" and it "calls for the payment of money and not

some other kind of fringe benefit." *Id*. at 430. "The proposal if implemented would provide an economic reward based upon services rendered," the Court went on to state. *Id*.

The Court's analysis in *Waterloo II* is instructive. The Court did not focus on how the overload pay was determined for each employee, but only on what the employer was required to do - provide remuneration for services rendered. The proposal here, like the one in *Waterloo II*, "does not seek to limit management's discretion to assign work, but relates solely to the payment for an amount of services rendered by an individual teacher" or other employee. *Id*. The UE's base wage proposal, tiered according to experience on the job, relies upon the employee's level of experience to determine the base wage. There is no prohibition in Iowa law preventing an employee organization from demanding bargaining of a base wage structure with reference to an employee's level of experience. The predominant purpose of the UE's pay grade structure creates nothing more than a base wage structure.

The second and final inquiry by the court in a negotiability dispute is whether a proposal is inconsistent with any other provision of law. *AFSCME Iowa Council 61*, 846 N.W.2d at 880. No party has argued, nor has PERB or the District Court found, that UE's pay grade structure is

unlawful. As such, the UE's proposal should be deemed mandatory as base wages.

E. PERB Erred in Determining that UE's Pay Structure Proposal, Differentiating Base Pay by Years of Experience on the Job, is Not Base Wages

PERB asserts the UE has failed to reconcile the definition of base wages with the broader subject of wages and claims the UE has failed to adhere to the strictures of a narrow and restrictive interpretation. This position ignores the many examples of remuneration that are excluded from base wages. Base wages exclude benefits, bonuses, incentive pay, and other more variable, or merely potential, income. Base wages do not include income beyond the minimum fixed income an employee receives. Any income beyond the minimum fixed income would be "wages."

The UE's Proposal III reflects the relationship between pay and experience. The lowest, base pay guaranteed to a veteran employee with 20 years of experience is higher than an entry-level employee. The term base wages does not foreclose on the employee organization's bargaining of a base wage structure that differentiates on factors such as experience or level of education.

PERB now restricts the bargaining of base wages to only those job classifications voluntarily delineated by the employer. Well established

definitions of "wages" have never restricted the bargaining of wages to a job classification. Doing so now in defining base wages, PERB has prevented employees from negotiating wages based upon factors such as levels of experience and education. This interpretation overextends the definition to create a ridiculous result. "[A]mbiguous statutory language should be construed in a fashion that produces a reasonable result." *Brakke v. Iowa Dep't of Nat. Res.*, 897 N.W.2d 522, 534 (Iowa 2017). PERB has effectively prevented the parties from bargaining a base wage structure or calculation that takes into account the employees experience and educational attainment. PERB has limited bargaining to the hiring wage. The UE's right to bargain is curtailed even more severely than Chapter 20 allows and without justification. There is no support in Chapter 20 or legislative history for such a position.

CONCLUSION

For all of the foregoing reasons, the ISEA respectfully requests that the Iowa Supreme Court reverse the decision of the District Court and the PERB and hold that the UE's proposals differentiating base wages for bargaining unit members by levels of experience on the job constitutes the mandatory subject of bargaining of base wages.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing brief was served upon the attorneys of record for the parties by filing the same with the Iowa Electronic Document Management System on June 26, 2018. The following attorneys of record were served through the Iowa Electronic Document Management System:

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/s/ Christy A.A. Hickman — June 26, 2018
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STATEMENT IN COMPLIANCE WITH IOWA RULE OF APPELLATE PROCEDURE 6.906(4)(d)

This brief was authored in its entirety by counsel for the Iowa State Education Association. Funding for the preparation and submission of the brief was borne solely by the Iowa State Education Association. No party, party's counsel, or other person contributed to the funding for the brief or assisted in the preparation or submission thereof.