IN THE IOWA DISTRICT COURT FOR POLK COUNTY

AFSCME IOWA COUNCIL 61, **Petitioner,** **v.** **PUBLIC EMPLOYMENT RELATIONS BOARD,** **Respondent.** **Dallas County, Intervenor.**	**Case No. CV 5286** **RULING ON PETITION FOR JUDICIAL REVIEW**

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CLERK DISTRICT COURT

INTRODUCTION

This Petition for Judicial Review brought by AFSMCE Iowa Council 61 ("AFSMCE") seeking to overturn a decision of the Public Employment Relations Board ("PERB") came before the court on December 17, 2004. The Petitioner was represented by its counsel Michael E. Hansen, and the Respondent was represented by its counsel Jan V. Berry. The essential issue for review before this court is whether, as claimed by AFSCME, the employers through their negotiator engaged in unfair labor practices pursuant to Iowa Code Chapter 20, or whether, as found by the Board, the Counties acted properly and AFSCME failed to timely request impasse procedures. After hearing the arguments of counsel, reviewing the briefs filed by the parties, and reviewing the record, the court enters the following Ruling.

STANDARD OF REVIEW

The facts presented in these consolidated cases involve similar although slightly dissimilar facts. In both these cases, the AFSCME representatives for both Dickenson County and Dallas County sent letters to these counties in September of 2003, the year

preceding expiration of the AFSCME contracts, requesting information from the employers including dates for negotiations and the identity of each county's negotiator.

The major highlights of contacts between Dickenson County and AFSCME concerning that contract were as follows:

September 2, 2003	AFSCME sent a letter of intent to bargain to Dickenson County by certified mail which included a request for dates to open negotiations and the identity of the County's negotiator. AFSCME maintains it received no response to this letter and that it was not provided the requested information. Ms. Von Bokern provided a copy of an October 15, 2003, letter she sent to AFSCME, but this letter did not provide dates for negotiations to begin.
December 29, 2003	AFSCME sent a second letter of intent to bargain to Dallas County by certified mail. In this letter, AFSCME stated it had not been contacted by the county, and said AFSCME's position was that the county had waived the March 15th statutory deadline by not responding.
January 8, 2004	The County sent a letter to AFSCME stating there would be no dual exchange of bargaining positions, and the county would respond in fourteen days. AFSCME was also told there would be no negotiations at the board meetings of January 13 or January 27, 2004.
January 13, 2004	AFSCME presented its proposal to the County.
January 27, 2004	AFSCME picked up the County's proposal and was told there would be bargaining, but was given January 30 and February 10, 2004, for mediation dates.
January 27, 2004	AFSCME sent a letter to PERB requesting that the fact-finding clock be started.
February 10, 2004	Mediation was conducted between the parties.
February 11, 2004	A letter was sent from PERB to the parties providing them with a list of fact-finders, which was received by the parties on February 13, 2004.

February 18, 2004	FAX from the County to AFSCME indicating they wanted to strike the list of fact-finders.
March 3, 2004	AFSCME sent a letter to PERB requiring they rule on the AFSCME's objections.
March 19, 2004	Fact-finding Hearing scheduled with John Baker as the fact-finder.
After March 15, 2004	AFSCME wrote a prohibitive practice complaint, the County complied with the impasse procedure, and the County moved to dismiss the prohibitive practice complaint.

The general course of the Dallas County contacts and negotiations with AFSCME concerning their contract were as follows:

September 2003	AFSCME maintains it received a copy of the Dallas County Budget for the next year which was prepared in September. The County says this document was mistakenly sent to AFSCME during negotiations and that it was a document in progress rather than the final county budget.
September 2003	AFSCME sent the County a letter asking for dates for negotiations. AFSCME did not receive a response to this letter.
December 22, 2003	AFSCME sent a letter to the County asking for an extension of the time line and waiver of fact-finding. The County declined to grant these requests. AFSCME maintains, and the County does not deny, that extensions were afforded to other bargaining units. At some point in time, AFSCME was told Ms. Von Bokern's calendar was closed to this bargaining unit.
January 13, 2004	AFSCME presented its initial proposal to the Board at the time and place the County provided them.
January 27, 2004	The County presented its proposal to AFSCME.
Janauary, 2004	AFSCME asked PERB to start the clock and asked for a list of fact-finders.

January 30, 2004	A letter was sent from Ms. Von Bokern to AFSCME stating the County intended to object to the fact-finding list.
February 3, 2004	Mediation began. The County presented a different opening position that it had provided on January 27, and never moved off this position during mediation. Negotiator Denny May declared an impasse.
February 5, 2004	AFSCME tried to contact Ms. Von Bokern to obtain her strikes from the fact-finding list but was unable to reach her.
February 6, 2004	AFSCME sent a letter requesting strikes from the list.
February 10, 2004	AFSCME set a letter asking to strike from the list.
February 11, 2004	AFSCME filed a Motion to Dismiss citing objections to conducting the fact-finding because the proceeding could not be completed by the deadline of March 15.
February 12, 2004	AFSCME strikes from the fact-finding list.
March 3, 2004	The County chooses this date, which is the last one available, for fact-finding.
March 16, 2004	The County sent a letter to PERB again filing its objections and requesting ruling.

During her testimony in both these cases, the County's negotiator Ms. Von Bokern repeatedly stated AFSCME was required to begin the negotiating process, and "the employer is not required to—it is not the employer's burden to start the bargaining process." (Dickenson Co. Transcript, pg. 53). She maintained that "this is simply a matter of the Union waiting too long to start the process, and that's what this gets down to, is the Union waited too long to begin the process, and it's their burden and their responsibility to do so, and there was simply no delay on the County's part in this case." (Crawford Co. Transcript, pg. 54)

In prior years, the negotiator, including Ms. Von Bokern, had agreed to continue negotiations beyond the statutory negotiation deadline. In 2004, however, the negotiator declined to grant a continuance. The negotiation and other procedures to reach contract agreements with these Counties were not completed.

STANDARD OF REVIEW

The Iowa Administrative Procedure Act, Chapter 17A of the Iowa Code, governs judicial review of administrative agency decisions. Section 17A.19(2) authorizes the district court to review such decisions. In 1998, the Iowa legislature amended section 17A.19 to describe specific standards and rules of judicial review of agency action. *Locate.Plus.Com, Inc. v. Iowa Dep't of Transp.*, 650 N.W.2d 609, 612 (Iowa 2002). The amendments are effective for agency action commenced after July 1, 1999. *Id.*

The Court acts "in an appellate capacity to correct errors of law on the part of the agency." *Swanson v. Employment Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). Review is not *de novo*. *Hussein v. Tama Meat Packing Corp.*, 394 N.W.2d 340, 341 (Iowa 1986). Nearly all disputes within the scope of administrative law are won or lost at the agency level. *Sellers v. Employment Appeal Bd.*, 531 N.W.2d 645, 646 (Iowa Ct. App. 1995).

This appeal results from a "contested case" in a state agency proceeding where the agency, rather than the Court, heard evidence and made findings of fact. *McMahon v. Iowa Dep't of Transp., Motor Vehicle Div.*, 522 N.W.2d 51, 54 (Iowa 1994). The agency's final determination will be affirmed if it is supported by substantial evidence. *Myers v. F.C.A. Servs., Inc.*, 592 N.W.2d 354, 356 (Iowa 1999); Iowa Code §17A.19(8)(f) (1999). Substantial evidence is that which a reasonable person would

accept as adequate to reach the same conclusion. *Pointer v. Iowa Dep't of Trans., Motor Vehicle Div.*, 546 N.W.2d 623, 625 (Iowa 1996). "Conversely, evidence is not insubstantial merely because it would have supported contrary inferences. Nor is evidence insubstantial because of the possibility of drawing two inconsistent conclusions from it. The ultimate question is not whether the evidence supports a different finding but whether the evidence supports the findings actually made." *City of Hampton v. Iowa Civil Rights Comm'n*, 554 N.W.2d 532, 536 (Iowa 1996). Therefore, if the agency's findings of fact are supported by substantial evidence, such findings are binding on the reviewing Court. *Id.*

Not only must the agency's final decision be supported by substantial evidence, but the agency must also be correct in its conclusions of law. *Glowacki v. Iowa Bd. of Med. Exam'rs*, 516 N.W.2d 881, 884 (Iowa 1994). When deciding whether an agency made an error of law, the Court gives some weight to the agency's construction of a statute, but it is not bound by this construction. *Super Valu Stores, Inc. v. Iowa Dep't of Revenue & Fin.*, 479 N.W.2d 255, 258 (Iowa 1991). "It is ultimately the duty of the court to determine matters of law including the interpretation of a statute or an agency rule interpreting a statute." *Hollinrake v. Iowa Law Enforcement Acad.*, 452 N.W.2d 598, 601 (Iowa 1990).

The Court may also reverse an agency action that is "[u]nreasonable, arbitrary or capricious, or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion." Iowa Code § 17A.19(8)(g). "Unreasonableness is defined as action in the face of evidence to which there is no room for difference of opinion among reasonable minds or action not based upon substantial evidence." *Northwestern Bell Tel. Co. v. Iowa*

Utils. Bd., 477 N.W.2d 678, 682 (Iowa 1991)(citing *Office of Consumer Advocate v. Iowa State Commerce Comm'n*, 419 N.W.2d 373, 374 (Iowa 1988)). "However, the agency is free to exercise its expertise within a reasonable range of informed discretion." *Id.*

Thus, this Court may "reverse, modify, or grant other appropriate relief only if agency action is affected by error of law, is unsupported by substantial evidence, or is characterized by abuse of discretion. *Sellers v. Employment Appeal Bd.*, 531 N.W.2d at 646 (citing Iowa Code § 17A.19(8) (1993)).

The Iowa Supreme Court has specifically discussed the review of PERB decisions by recently stating:

> Iowa Code section 20.11governs the procedure for "[p]roceedings against a party alleging a violation of section 20.10"--the prohibited practices provision. Iowa Code § 20.11(1). The proceeding is commenced by a party filing a complaint with the PERB within ninety days of the alleged violation. *Id.* The PERB is an agency within the meaning of Iowa Code chapter 17A--the Iowa Administrative Procedure Act. *Maquoketa Valley Cmty. Sch. Dist. v. Maquoketa Valley Ed. Ass'n*, 279 N.W.2d 510, 512 (Iowa 1979). An administrative law judge hears the complaint and renders a decision, which may be appealed to the PERB. Iowa Code § 20.11(2). The PERB may hear the appeal de novo or upon the record made before the administrative law judge. *Id.* Finally, Iowa Code section 20.11(5) provides that the PERB's "review of proposed decisions and the rehearing or *judicial review* of final decisions is governed by the provisions of chapter 17A." Iowa Code § 20.11(5)(emphasis added)."

O'Hara v. State, 642 N.W.2d 303, 315 (Iowa 2002).

CONCLUSIONS OF LAW

The issue presented in this case is whether the Counties involved, by not responding to AFSCME inquiries in the fall of 2004 and then refusing to grant extensions of the time line as had been granted in the past and were granted to other bargaining units in this same year, engaged in unfair labor practices in violation of Iowa's Public Employment Relations Act as set for in Iowa Code Chapter 20.

The stated purpose of Iowa Chapter 20 is "to promote harmonious and cooperative relationships between government and its employees..." Iowa Code §20.1. This statute requires that **"[t]he public employer and the employee organization shall meet at reasonable times, including meetings reasonably in advance of the public employer's budget-making process, to negotiate in good faith...."** Iowa Code §20.9 (emphasis added). **"Upon the receipt by a public employer of a request from an employee organizations to bargain on behalf of public employees, the duty to engage in collective bargaining shall arise if the employee organization has been certified by the board as the exclusive bargaining representative for the public employees in that bargaining unit."** Iowa Code §20.16. (Emphasis added).

It is a prohibited practice for either the employer or the employee organization to "refuse to negotiate in good faith with respect to the scope of negotiations as defined by section 20.9," and to "refuse to participate in good faith in any agreed upon impasse procedures or those set forth in this chapter." Iowa Code §20.10(1) & (2)(g). Any proceedings for violations of these requirements "shall be commenced by filing a complaint with the board within ninety days of the alleged violation causing a copy of the complaint to be served upon the accused party in the manner of an original notice as provided by this chapter." Iowa Code §20.11(1).

This statute goes on to state:

> "10. The negotiation of a proposed collective bargaining agreement by representatives of a state public employer and a state employee organization shall be complete not later than March 15 of the year when the agreement is to become effective. The board shall provide, by rule, a date on which any impasse item must be submitted to binding arbitration and for such other procedures as deemed necessary to provide for the completion of negotiations of proposed state collective bargaining agreements not later than March 15. The date selected for the mandatory submission of impasse items to binding arbitration shall be

> sufficiently in advance of March 15 to insure that the arbitrators' decision can be reasonably made before March 15."

Iowa Code §20.10(1). Rules have been adopted setting forth procedures and deadlines for mediation, fact-finding, binding arbitration, and impasse procedures to insure that the deadlines required by the statute are met. See Iowa Admin Rules 621-7.1 through 621-7.7.

Iowa has long required that collective bargaining pursuant to these provisions begin in a timely manner, but "there must be at a minimum some expectation that the process could be completed within the statutory period." *City of Des Moines v. PERB*, 275 N.W.2d 753, 757 (Iowa 1979). The Supreme Court, in holding that PERB could order binding arbitration in a case involving statutory impasse procedures, placed "the burden on [t]he 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." *Id.*, 275 N.W.2d at 761. The *City of Des Moines* court went on to state there was nothing in this Act which prevented a "continuation of the bargaining during the time that impasse procedures are in progress." *Id.* This decision however, including the determination that the employee organization carried the burden to see negotiations were timely, is based upon a finding that the parties in the *City of Des Moines* case were negotiating in good faith." *Id.*, 275 N.W.2d at 763. This is dissimilar from the case at hand, where the Counties are accused of engaging in unfair labor tactics by first delaying negotiations through their failure to provide requested information including dates for negotiations, and then by refusing to continue bargaining after the deadline was reached.

In *Cedar Rapids Association of Fire Fighters v. IPERB*, 522 N.W.2d 840, (Iowa 1994), the court determined that the city's failure to include proposals in its initial statement at the public bargaining session did not constitute willful refusal to negotiate. In so holding, the court stated that "if the initial proposal is so devoid of meaningful information that it does not give reasonable notice, the offending party might well be found to have violated section 20.17. *Id.*, 522 N.W.2d 840, 842-42 (Iowa 1994). A finding of willful refusal to deal refers to "conduct that is not merely negligent," and requires a showing that "the employer either knew or showed reckless disregard for the matter of whether its conduct was prohibited by the statute." *Id.*, 522 N.W.2d at 843. The court has determined that every breach of bargaining statute does not automatically constitute a good faith refusal to negotiate. Rather "the action relied on to establish a prohibited practice complaint must be so significant in its scope and done with such knowledge or reckless disregard for the facts as to effectively thwart the negotiating proceedings." *Id.* **The duty to negotiate in good faith pursuant to the statute includes the obligation on the part of the public employer's part to supply the union with information relevant and necessary to providing effective representation in negotiations**. *Greater Community Hosp. v. Public Employment Relations Bd.*, 553 N.W.2d 869, 871 (Iowa 1996)(emphasis added)(holding employer was required to produce salary information which was open to the public to union for the purpose of negotiations). *See also Marion Hosp. Corp. v. N.L.R.B.*, 321 F.3d 1178, 1188 (CA DC 2003)(stating a continuing delay of bargaining may discourage support for the union and may constitute an unfair labor practice.)

The issue presented in this case is whether Dickenson County and Dallas County refused to negotiate in good faith in violation of Iowa Code Chapter 20. The Counties claim they were not at fault because AFSCME, as the representative of the employees, had the duty to present the first proposal which begins negotiations. In her testimony before PERB, Ms. Von Bokern, on behalf of both Counties, repeatedly maintained the Counties could not be held to be at fault in these cases because it was AFSCME's duty to present the first proposal, and AFSCME did not present a formal proposal until early January. This conclusion, however, which also seems to have been adopted by PERB, is adverse to the statute and other case law which state that good faith includes the duty to "supply relevant information" (such as the name of the negotiator and dates for negotiations); and requires that both the employer and the employee "meet at reasonable times, including reasonably in advance of the public employer's budget-making process." Furthermore, the statute specifically states the duty to engage in collective bargaining "shall arise if the employee organization has been certified" which is undisputed in this case. Finally, the Counties' assertion that Chapter 20 requires that the union present the first proposal is not found anywhere in the statute, and case law only creates such a duty when both parties have acted in good faith. *See City of Des Moines v. PERB*, 275 N.W.2d 753, 757 (Iowa 1979).

AFSCME requested relevant information necessary to begin negotiations, including the identity of the Counties' negotiator and time for negotiations from both these counties, in September well in advance of the statutory deadlines. For whatever reason, both Counties ignored these letters and did not provide the requested information.

It was only in late December or early January that the Counties even provided dates to begin negotiations, and then only after repeated demands by AFSCME.

In this case, the employers failed to provide the Union with information requested in September of the prior year, stalled negotiations, and they refused to provide a waiver of time limits which had readily been provided by the employer in the past, and which were provided to other bargaining units in this same year. In effect, the employers used the time limits provided in the statute to box the union into a position where they did not have sufficient time to bargain and effectively ensured that good faith negotiations did not take place in either of these cases. In addition, the actions of Dallas County by providing copies of its budget with what appeared to be final numbers containing no increases for the employees to AFSCME during negotiations, at the very least chilled the relationship between the parties sufficiently to further impede open and free negotiations. Under these circumstances the totality of both Dallas County's and Dickinson County's actions, by abiding by their duty to supply AFSCME with dates for negotiation and then refusing to continue the negotiations past the time line, constitute willful failure to negotiate in good faith and the decision of the PERB must be reversed.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the February 28, 2003 decision of the Public Employment Relations Board is **REVERSED**, and the case is remanded to the Board to take any further action necessary consistent with this opinion.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the costs of this proceeding are taxed to the Respondent.

DATED this 8th day of April, 2005.

CARLA T. SCHEMMEL, JUDGE
Fifth Judicial District of Iowa

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