IN THE IOWA DISTRICT COURT FOR POLK COUNTY

IOWA ASSOCIATION OF SCHOOL BOARDS,	)	
	)	
Petitioner,	)	CASE NO. AA 3417
	)	
vs.	)	
	)	RULING ON PETITIONER'S
IOWA STATE EDUCATION	)	PETITION FOR JUDICIAL
ASSOCIATION and IOWA PUBLIC	)	REVIEW
EMPLOYMENT RELATIONS BOARD	)	
	)	
Respondents.	)	

INTRODUCTION

The above-captioned matter came on for hearing on June 20, 2000. The Petitioner, Iowa Association of School Boards (hereinafter "IASB"), was represented by Thomas Foley. The Respondent, Iowa State Education Association (hereinafter "ISEA"), was represented by Becky Knutson. The Respondent, Iowa Public Employment Relations Board (hereinafter "PERB") was represented by Jan Berry. After reviewing the record and hearing the arguments of the parties, the Court finds as follows:

STATEMENT OF THE FACTS

ISEA filed a Petition for Declaratory Ruling with PERB on March 19, 1999. The sole issue raised was whether the certain proposed contractual language, held mandatory in Aplington Community School Dist. v. Iowa Public Employment Relations Bd., 392 N.W.2d 495 (Iowa 1986) continued to be a mandatory subject of bargaining under Iowa Code §20.9. On April 6, 1999, IASB filed a Motion to Intervene, which was granted by PERB on April 19, 1999. After the filing of briefs, oral arguments were held before PERB on May 19, 1999. On June 2, 1999,

PERB issued a written decision holding the language at issue to be a mandatory subject of bargaining under §20.9. IASB filed this appeal on June 24, 1999.

CONCLUSIONS OF LAW AND FURTHER FINDINGS OF FACT

The standard of review for cases arising out of the Administrative Procedure Act is governed by Iowa Code 17A.19(8). Fairfield Toyota, Inc. v. Bruegge, 449 N.W.2d 395, 397 (Iowa App. 1989). In judicial review proceedings involving decision of Public Employment Relations Board, the district court functions in appellate capacity to correct errors of law. Greater Community Hosp. v. Public Employment Relations Bd., 553 N.W.2d 869, 871 (Iowa 1996). The court has no original authority to declare the rights of the parties. Office of Consumer Advocate v. Iowa State Commerce Comm'n, 432 N.W.2d 148, 156 (Iowa 1988). Nearly all disputes in the field of administrative law are won or lost at the agency level. Iowa-Illinois Gas and Elec. Co. v. Iowa State Commerce Comm'n, 412 N.W.2d 600, 604 (Iowa 1987).

Judicial review is on error of law, not de novo. Gates v. John Deere Ottumwa Works, 587 N.W.2d 471, 474 (Iowa 1998). In order to successfully challenge agency action, a party must demonstrate prejudice to substantial rights arising from agency action which falls within one of the grounds designated in section 17A.19(8)(1997). Mercy Health Center v. State Health Facilities Council, 360 N.W.2d 808, 811 (Iowa 1985).

ISEA was prompted to request the Declaratory Ruling from PERB by the legislature's amendment of Iowa Code §279.14. The legislature kept the original language of the statute, but added a subsection (2), which provides in part that "[t]he determination of standards of performance...shall be reserved as an exclusive management right of the school board and shall not be subject to mandatory negotiations under chapter 20." Iowa Code §279.14(2). IASB argues that the term "standards of performance" is synonymous with the term "evaluation

criteria," which had been interpreted to be subject to mandatory bargaining. Aplington Community School Dist. v. Public Employment Relations Board, 392 N.W.2d 495 (Iowa 1986). IASB argues that because "standards of performance" is equivalent to "evaluation criteria," §279.14(2) effectively overrules Aplington, excluding evaluation criteria from mandatory bargaining. IASB contends that §279.14(2) was enacted to provide school boards with the necessary authority to comply with §256.7(21), which requires school districts to improve student achievement by implementing accountability standards.

ISEA's response is that if the legislature had intended to overrule Aplington's holding that evaluation criteria was subject to mandatory bargaining, it would have used the term "evaluation criteria" in §279.14(2). Because it instead used the phrase "standards of performance," the legislature was simply adding another factor to be considered in evaluation. In it's Declaratory Order, PERB found that while it was not clear what the legislature meant "standards of performance" to represent, the phrase was not was synonymous with "evaluation criteria." The fact that the legislature did not use the term "evaluation criteria" was inconsistent with IASB's argument that subsection 2 was intended to overrule Aplington.

Iowa Code §279.14 provides:

> 1. The board shall establish evaluation criteria and shall implement evaluation procedures. If an exclusive bargaining representative has been certified, the board shall negotiate in good faith with respect to evaluation procedures pursuant to chapter 20.
>
> 2. The determination of standards of performance expected of school district personnel shall be reserved as an exclusive management right of the school board and shall not be subject to mandatory negotiations under chapter 20. Notwithstanding chapter 20, objections to the procedures, use, or content of an evaluation in a teacher termination proceeding brought before the school board in a hearing held in accordance with section 279.16 or 279.27 shall not be subject to the grievance procedures negotiated in accordance with chapter 20. A school district shall not be obligated to process any evaluation grievance after service of

> a notice and recommendation to terminate an individual's continuing teaching contract in accordance with chapter 279.

In Aplington, the Iowa Supreme Court held that the proposals at issue in this proceeding to be within the §20.9 topic of "evaluation procedures" despite the language of §279.14(1), which was the only provision of the statute existing at that time. See Aplington, 392 N.W.2d 495. Further, because of this decision the Court held that grievance procedures related to the proposals were also subject to mandatory negotiation. This would "ensure that the established criteria were rationally and fairly applied." Id. at 500.

IASB's argument that §279.14(2) overrules Aplington and the two cases affirming it, Northeast Community School Dist. v. PERB, 408 N.W.2d 46 (Iowa 1987) and City of Dubuque v. PERB, 444 N.W.2d 495 (Iowa 1989), is unpersuasive. In construing this statute, the Court looks for legislative intent as shown by what the legislature said, rather than what it should or might have said. Ia.R.App.P. 14(f)(13). The Court also assumes that the legislature knows the existing state of the law, including judicial definitions, and intends to use those meanings when it enacts a statutory amendment. Beier Glass Co. v. Brundige, 329 N.W.2d 280, 285 (Iowa 1983). Therefore, when §279.14(2) was added, the legislature knew that evaluation criteria in §279.14(1) were part of evaluation procedures pursuant to §20.9, and therefore subject to mandatory bargaining.

Using these assumptions, this Court cannot say that the legislature intended the phrase "standards of performance" to be synonymous with "evaluation criteria." IASB argues that "standards of performance" is simply another way to say "evaluation criteria." In support it cites the enactment of §256.7(21), which requires school districts to adopt accountability standards to

improve student achievement. IASB argues that the added burden of §256.7(21) makes it necessary that school boards set the criteria by which teachers will be evaluated. However, as PERB stated in its Declaratory Ruling, if the legislature intended to overrule Aplington with §279.14(2), it would have used the term "evaluation criteria," which had been used in Aplington and its progeny.

Further support of the position taken by ISEA and PERB is found in the fact that S.F. 2366, the precursor legislation to §279.14(2) which was not enacted, used both the terms "criteria for evaluations" and "standards of performance." At least at some point the Senate believed the two terms were distinguishable. Moreover, there were no changes to the language of §20.9, or any other applicable provisions of Chapter 20, which would support IASB's position. This is significant because the mandatory nature of a subject of bargaining under Chapter 20 is determined by consideration of the language in Chapter 20 and of the language set forth in a particular proposal. Woodbine Community School Dist. v. PERB, 316 N.W.2d 862, 864 (Iowa 1982).

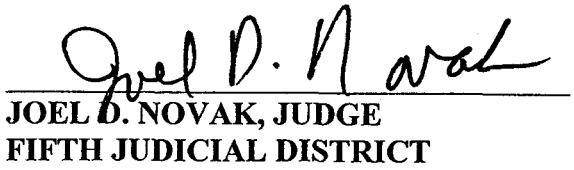
As far as the grievance procedures are concerned, §279.14(2) appears to impose a time limit on a teacher's "right to grieve." A school district is not required to process a grievance concerning evaluations "after service of a notice and recommendation to terminate an individual's continuing teaching contract in accordance with chapter 279." The holding in Aplington that grievance procedures are the subject of mandatory bargaining remains intact.

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT the June 2, 1999, Declaratory Ruling of the Public Employment Relations Board is AFFIRMED.

DATED this 11 day of July, 2000.

Costs of this proceeding are taxed to Petitioner.



JOEL D. NOVAK, JUDGE
FIFTH JUDICIAL DISTRICT

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