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Searchable PERB Decisions & Contracts Now Online

Earlier this month PERB launched its new electronic research and retrieval database system, making it available to the public through the PERB website. The Board chose to develop the system to assist constituents with their research of Chapter 20 and provide greater access to agency decisions and collective bargaining agreements.

The system is a powerful search tool and offers a comprehensive collection of documents. There are three databases of full-text documents in the system: Contracts, PERB and Court Decisions, and Neutral Decisions. For each database, the system displays an index of its full-text documents, allows electronic access to these documents, and provides search functions to facilitate research by any user. The databases are accessible through the "Searchable Databases" link on the PERB website's homepage http://iowaperb.iowa.gov

PERB's system is unique due to its ability to conduct word searches of *PDF* files and, unlike other search engines, is not limited to *WORD* documents. As a result, cases dating back to 1975 are included in the PERB and Court Decisions database.

Prior to its commitment to this project, the Board recognized the trend toward electronic search engines as a means of providing information. However, in searching for options, the Board found many of the existing systems fell short of its expectations. The Board's introduction to the selected system was a result of a suggestion from the Iowa Association of School Boards (IASB) and the Iowa State Education Association (ISEA) who had jointly maintained a database system of their contracts. PERB collaborated with their provider, Microsearch, to develop a similar system that would serve as a single, independent source for all public employers, public employees, and certified employee organizations. The system will allow IASB and ISEA to eliminate their duplicative systems, provide public access to documents that were previously unavailable to some users, and improve the effectiveness of research of PERB and court decisions, collective bargaining agreements, and decisions by neutrals.

Preliminary feedback from users has been very positive. The Board anticipates that the system's capabilities will meet the expectations of users experienced with search engines and that its user-friendly features will meet the expectations of those less experienced. Send any comments or suggestions to diana.richeson@iowa.gov

Public Employment Relations Board And Simpson College Plan Partnership

The Public Employment Relations Act requires PERB to collect and provide information regarding wages, hours, and conditions of employment. This statutory requirement prompted a working relationship between PERB and Simpson College. To date Simpson College students, working as interns and with Simpson Lilly Initiative grants have performed research studies including a survey of multi-year contracts in schools, and, significantly, assisted in the development of a State-Wide Labor Management Committee which has implemented PERB's Health Care Data Collection Project.

The goal of a proposed three-year partnership between the College and PERB is twofold: First, to provide workplace experience for students. Second, to provide PERB with qualified assistance to complete its Health Care Data Collection Project under the direction of Professor of Management Ruth Weatherly. The Project is intended via a survey document jointly developed and submitted by labor and management representatives to provide Iowa public sector unions and employers, regardless of size, with access on PERB's website to health care coverages, costs, and creative solutions to health care issues. The Project will cover 1,173 bargaining units, which includes approximately 95,000 state, county, city, school district, and Board of Regents employees.

Guest Perspectives: The Public Employment Relations Act: "A Look Back And A Look Forward"

By Peter Pashler

In 1974 I presented the first PERB budget to Marv Selden, the State's Budget Director. Much to my amazement, he approved everything for which I asked. Marv's reputation was to never approve a department's budget as submitted. He was Governor Ray's financial guru. He was tight with the taxpayers' money, but we got everything we requested so I asked him – why? "Simple," he said. "When PERB and this new law fail, which is likely, I don't want anyone to say it was for lack of funding." His generosity suddenly became a two-edged sword.

Marv's boss, Governor Ray, had invested political capital in this law, but clearly Marv had his doubts. So did such labor titans as Harry Smith from Sioux City and Art Hedberg in Des Moines who had long records as lawyers for the AFL-CIO and its member unions and who struggled with 'giving up' the goal of the 'right to strike'. Chapter 20 had been debated for 20 days straight in the House, seven days in the Senate. Governor Ray took substantial political and public policy risks when he and a group of progressive Republicans fashioned a compromise with Democrats and leaders of organized labor.

Their final compromise: NO to the right to strike; YES to binding arbitration. At the heart of their compromise was the balance of issue by issue final offer arbitration for a narrow scope of bargaining. For the next thirty years, Iowa remained the only state in the country to fashion this particular "middle ground", a truly creative experiment in public sector labor relations.

These features were hard-fought compromises. Marv Selden's remarks about PERB's chances for success reflected the views on both sides of the aisle. Many Republicans, Democrats, labor leaders, and public managers who had supported the compromises had their doubts as to whether the bill would succeed.

The rest of the story we now take for granted: an arbitration rate of less than 5% per year; wages negotiated against a standard of comparability; no strikes; negotiation results typically proportionate to the problems addressed; and negotiation and mediation that works again and again.

So why change now? For the first time since passage of the law the Democrats control two branches of government so technically they have the political power to change the law. Is that reason enough? Apparently, Governor Culver did not think so and, from the comments many Democratic legislators made after

Continued on page 3

By Charles Gribble

The recent very public and divisive debate over a legislative bill to amend Iowa Code Chapter 20, put the public sector bargaining law back in the spotlight for the first time in many years. To understand the significance of the debate and to place that debate in the proper context, it is helpful to look at where we have come from over the last forty (40) years.

In 1970, the Iowa Supreme Court in State Board of Regents v. United Packing House, 175 NW 2d 110 (Iowa 1970), said that while public employers could "meet and confer" with public employees over wages and other matters, employers could not enter into collective bargaining agreements nor recognize employee organizations in the "industrial context" absent specific legislation authorizing collective bargaining. A few years later, the Iowa Legislature, under Republican Governor Robert Ray, did provide public employees with bargaining rights by passing what became The Iowa Public Employment Relations Act of 1974.

Collective bargaining which began in the mid-1970's often culminated in fact-finding and arbitration hearings lasting several days. As the process and the parties matured, the number of items in dispute and the length of the hearings were markedly reduced. A negotiability dispute was a companion to an unresolved contract in almost every case. PERB and the courts struggled to find an appropriate test to determine if a particular proposal was a mandatory, permissive or illegal subject of bargaining.

The law itself would receive its severest test in the early 1990's when then Governor Branstad refused to abide by a series of interest arbitration awards rendered in favor of AFSCME, SPOC and IUP. The Governor claimed that the resources to fund the awards had already been spent for a fiber-optic network, and in any event, the bargaining law itself was unconstitutional. The claim was made that the law improperly delegated the State's power to a private person – an arbitrator – who could in turn bind the State and require the expenditure of public resources. Tensions mounted as courts in other states including Pennsylvania and South Dakota had accepted similar arguments in striking down public sector bargaining laws. A multi-week trial ensued in Polk County District Court in which constitutional experts, drafters of the legislation and then current members of the legislature were called to the witness stand. The District Court decision upholding the validity of the arbitration awards was appealed to

Continued on page 4

Peter Pashler
Continued from page 2

his recent veto, others have come to share his opinion.

As we go forward why not take a page from the past and only consider changes in the law that reflect the spirit of balance between management and labor that was in the original bill? What kind of changes do I have in mind?

If the legislature is to add items to the scope of bargaining that are clearly pro labor such as just cause discharge (for employees not covered by Iowa Code 279 or civil service laws), other employment economic benefits, or fair share - three labor issues that are understandable and for which I am sympathetic - then consideration should also be given to changes that will direct government to do a better job as management and help the entire labor relations process. If discipline and discharge is added, then a definition of just cause should be considered that requires governments to set work rules, set standards of conduct, and be consistent in their application. Arbitrators need to be directed to apply these work rules and standards of conduct and to be held accountable for doing that.

Broadening the list of mandatory economic issues beyond "wages" to cover other employment economic items like travel reimbursement, meal allowances, clothing allowances, etc. would inadvertently encourage arbitration. Negotiators would have an incentive to go to arbitration just to try to get an increased number of economic items into the contract. Unfortunately, this occasionally already happens with the two economic items "wages" and "insurance" because arbitrators split between these two issues giving one issue to labor and the other to management. This could be solved by changing 'issue by issue' arbitration to 'total package' arbitration. This change preserves arbitration but would greatly increase the pressure on negotiators from both sides to reach a settlement. It is an absolutely necessary change if the number of economic issues subject to arbitration is increased.

Annual negotiations are anachronistic. The public's tolerance to government labor disputes never was high, and it is not helped by the annual public ritual of the union's high, unrealistic first demands and low, equally unrealistic management counter proposals. Labor contracts should all be at least two years in duration, if not longer. This is the direction of state budgeting and economic forecasting. It is how Chapter 20 contracts should be negotiated.

After 30 years we still do not have a clear definition of ability to pay. Why not, if we are considering other changes, invite public hearings and legislative debate fashioning a definition of ability to pay? Let me suggest that an 'ability to pay' should be established when a pay increase does not result in a reduction of service as determined by the arbitrator (perhaps after considering comparable service levels by comparable governments) and that arbitrators only apply comparability standards once ability to pay is established.

Finally, why not consider fair share? Today, too many public employees get the benefits of the bargaining without any involvement in the process. They don't go to meetings. They don't express their views. They get the benefits of the bargaining without contributing to the costs. The effect not only hurts labor, but it also hurts management and burdens the business of effective running of our governments. Unions that have the responsibility for everyone in the bargaining unit - not just an activist minority - do a better job at articulating and advocating issues that result in improved government services across the board.

I recognize that many people from the labor side believe particularly strongly in expanding the scope of bargaining. The question is how to do that. My suggestions have pro-labor and pro-management elements. If the Legislature constructs revisions in Chapter 20 with a balance like the original drafters put into the original law, they will similarly blend management and labor suggestions. All changes considered need to be made in the same spirit that had Governor Bob Ray and Marv Selden working out compromises with Harry Smith and Art Hedberg in Chapter 20 - the first version.

Peter Pashler served for fifteen years as the initial Executive Director of PERB and a Board Member. He has held a variety of labor relations positions including president of a teachers union, management representative for schools, cities and counties in Iowa, and as a fact-finder and arbitrator in labor disputes in both the public and privates sectors. He has served as a consultant in six states to either the governor or legislature advising on drafting collective bargaining statutes. He is an adjunct professor of labor relations at Drake Law School. The views he expresses in this article are his own opinions and are not necessarily those of his clients.

Charles Gribble
Continued from page 2

the Iowa Supreme Court in AFSCME v. State of Iowa, 484 N.W. 2d 390 (Iowa 1992). The Court concluded that the delegation of power to a neutral was not unconstitutional where the arbitrator was obligated to consider public policy factors and adequate safeguards as to procedure, formation and enforcement of the award were provided in Chapter 20. The Court further found that the State had the ability to enter into contracts and was similarly bound by those contracts, stating "It would be no favor to the State to exonerate it from contractual liability. To do so would seriously impair its ability to function." Finally, the Court found that while the Governor did have the power to veto the bill funding the awards, "the veto did not serve…to erase the underlying obligation of the State."

The Iowa Supreme Court, until recently, both before and after the decision in AFSCME, narrowly and restrictively interpreted the meaning of each subject set forth in Iowa Code §20.9. "It appears that the legislature intended the terms used in §20.9 of the Code to have a restrictive and narrow application." City of Fort Dodge v. Iowa PERB, 275 N.W. 2d 393, 398 (Iowa 1979), *See also* Charles City Comm. School Distr. v. Public Employment Relations Board, 275 N.W. 2d 766, 770 (Iowa 1979). Even if the proposal survived this restrictive interpretation, the court then balanced the employee's right in negotiating the proposal against the employer rights set forth in Iowa Code §20.7.

The Iowa Court's relatively recent decision in Waterloo Education Association v. Public Employment Relations Board, 740 N.W. 2d 418 (Iowa 2007), substantially changed the analysis to be utilized in determining whether a particular bargaining proposal constituted a mandatory subject.

The Court in Waterloo specifically rejected the view that each term listed in §20.9 should be given a narrow, rather than its ordinary meaning. Waterloo at 429, 430. Further, the Court stated that if a subject is clearly set forth in §20.9, the Court would no longer engage in a balancing test between the employee's interest and the employer's rights under §20.7. Rather, the Court stated that because the list was limited, the legislature had already done the balancing. In other words, the legislature, by not adopting the broad "wages, hours and other terms and conditions" (29 U.S.C. §158D) had already engaged in this process and no further balancing was necessary by the Court.

At issue in Waterloo was a proposal providing that elementary teachers who work more than 300 minutes per day would receive additional compensation and secondary teachers who teach more than five (5) class periods would also receive additional compensation. The Court concluded that this proposal was a mandatory subject of bargaining. In the past, based on prior Court precedent, it is likely that the Court would have concluded under the balancing test that such a proposal interfered with management's right to assign work.

Waterloo still leaves unresolved a question of whether a court would consider a mandatory subject of bargaining a proposal by fire fighters requiring a city to have a certain number of individuals on duty during every shift or a proposal by nurses that they would be assigned no more than a given number of patients during their work day. The court would still likely consider that proposal to be a permissive subject of bargaining. However, if the employee organization were to frame the proposal as follows: *the hospital may assign any given number of patients to a registered nurse it so chooses, however, if the hospital chooses to assign more than eight (8) patients during a given shift, the nurse will be entitled to a twenty-percent (20%) shift premium* the court, under the rationale of Waterloo, may find the proposal to be a mandatory subject of bargaining.

Public employees have long sought to negotiate over proposals that would allow teachers to limit class size, nurses to cap the number of patients to be cared for, and police and fire to have a minimum number of bargaining unit members on duty per shift. Teachers, nurses, police and firefighters state that the above-proposals are necessary to effectively serve students, patients or the public and service is adversely affected without the ability to limit the number served or to increase staffing levels. Few supervisors, despite the divisiveness of the recent debate, would disagree with the employee's position. After all, most administrators once served in the positions they now supervise and are aware of the problems inadequate staffing creates. On the other hand, employers almost universally opine that staffing decisions belong exclusively to management in order to ensure that services are provided within the budget of the public entity. These competing positions were evident during the recent debate over Chapter 20 amendments. While some tension will always exist between these competing positions, much more can be done through reason and discussion beginning with recognition of the legitimacy of both positions. The law does provide safeguards if an arbitrator renders an award precluding an employer from providing services within the employer's budget. Thus, as difficult as the issue may seem, the same spirit that lead to the passage of the Public Employment

Continued on page 5

Charles Gribble
Continued from page 4

Relations Act; the experience of the last several decades; and compromise provide a framework to resolve this matter and move employer/employee relations forward.

Charles Gribble is a partner in a Des Moines law firm, has served multiple terms as Chair of the Employment Law Committee of the Iowa State Bar Association, and has argued more than seventy cases to the Iowa Supreme Court on employment law matters.

2009 PERB Conference

Save the dates and plan to attend the next PERB conference on October 8-9, 2009, at the West Des Moines Marriott. The conference will mark the 35th anniversary of the Public Employment Relations Act. Look for updates as more information becomes available.

2007-2008 Impasse Statistics

Requests for Impasse Services Received:		580*
Fact-Finding Reports Issued:		
City	4	
County	6	
K/12 classified	1	
Total		11
Interest Arbitration Reports Issued:		
City	2	
County	4	
K/12 Certified	6	
AEA Certified	1	
Total		13
Pre-arbitration resolution rate:		97.76%

* 9 open cases

PERB's Role in the Legislative Process

By M. Sue Warner, Board Member

The Iowa Legislature passed the Public Employment Relations Act, Iowa Code chapter 20 (PERA) in 1974 and established the Public Employment Relations Board (PERB) to administer it. The statute delineates rights, duties, and prohibitions which apply to labor and management, sets out election procedures, collective bargaining and impasse resolution procedures, and provides for adjudication of prohibited practices and other cases.

Although there have been few major substantive changes in the PERA since it was enacted in 1974, such changes have been considered by the legislature over the years, some supported by management and some supported by labor. Most recently, H.F. 2645, which included changes in the scope of bargaining and other provisions, was passed by the legislature but vetoed by the Governor in May of this year.

Successfully administering the PERA, which essentially structures the collective bargaining relationship between labor and management, requires PERB to function as a neutral agency and not one which is either pro-labor or pro-management. Only if the Board and staff exhibit both the appearance and the reality of fairness and impartiality in performing all of their duties can labor, management and the public maintain confidence in the integrity of the statutory scheme.

Not only does PERB have a fundamental responsibility to be neither pro-labor nor pro-management, PERB also recognizes that it is the legislature's responsibility, not PERB's, to determine what the statute will provide. These concepts form the basis for PERB's long-standing view that it should generally take no position on substantive policy issues in proposed legislation. The Board deems it appropriate and necessary for PERB to provide its views to the legislature about technical matters such as whether proposals will be difficult to understand and administer, or about budgetary matters such as the estimated cost to the agency of proposed legislation. The Board also thinks it appropriate for PERB to advocate for noncontroversial technical or corrective changes in existing statutory language. However, the Board believes that taking a position in support of or in opposition to controversial proposed legislation can undermine the goal of preserving confidence in the agency's fairness and impartiality.