FILED
DEC 2 6 1984
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

512

SOUTHEAST IOWA SPECIAL EDUCATION EMPLOYEES ASSOCIATION,

Petitioner-Appellant,

vs.

PUBLIC EMPLOYMENT RELATIONS BOARD,

Respondent-Appellee.

Filed December 26, 1984

4-425
84-80

Appeal from the Iowa District Court for Lee County - D. B. Hendrickson, Judge.

Petitioner appeals from the district court decision on judicial review affirming respondent agency's determination that two negotiating proposals regarding mileage reimbursement and physical examinations do not constitute mandatory subjects of bargaining. AFFIRMED.

Charles E. Gribble and Gerald L. Hammond of Sayre & Gribble, P.C., Des Moines, for petitioner-appellant.

Susan K. Schreurs and M. Sue Warner, Des Moines, for respondent-appellant.

Heard by Snell, P.J., and Schlegel, and Hayden, JJ.

SNELL, P.J.

The Southeast Iowa Special Education Employees Association (Association) filed a petition seeking judicial review of five proposals held permissive by the Public Employment Relations Board (PERB). By subsequent written amendment, the Association withdrew three of the proposals and, through oral amendment at the hearing before the district court, further limited the scope of one of the two remaining issues. Thus, submitted for the trial court's consideration were proposals concerning reimbursement for mileage expenses of employees incurred while performing employment duties, and reimbursement for the costs of medical exams of employees required by the public employer.

The Association appeals from a decision of the Lee County District Court holding that the two proposals do not constitute mandatory bargaining subjects under the Public Employment Relations Act (PERA). The Association also appeals from an apparent trial court finding that the mileage reimbursement proposal would also constitute an illegal bargaining subject.

The two proposals are:

Issue 1

Expenses of Traveling Employees

1. Employees who may be requested to use their own automobiles in the performance of their duties and employees who are assigned to more than one (1) school per day shall be reimbursed for all such travel at the rate of twenty-four (24) cents per mile for all driving done between arrival at the first location at the beginning of their work day. However, if the distance from the employee's home to first location or from last location to the employee's home is greater than the distance between the employee's home and the designated office, the employee shall be reimbursed for the difference at the rate of twenty-four (24) cents per mile.

2. The same allowance shall be given for use of personal cars for field trips or other business of the Agency. The Board shall provide adequate liability insurance protection for employees when their personal automobiles are used as provided in this section. The

terms of the liability insurance shall be negotiated between the Board and the Association and the agreement shall be made a part of this Contract.

Issue 2

1. Physical fitness - new employees - The employer shall pay full costs of employees' physicals required for employment. Such a physical shall consist of items required by the District and made available to the employee for use at the time of the physical. The District shall directly pay the appropriate medical personnel for the physical.

2. Physical fitness - continuing employees - The Board shall pay the cost of any physicals or tests it requires for the continued employment in the District including but not limited to the tuberculosis test.

I. Test for Determining Whether a Subject is a Mandatory Bargaining Subject.

Iowa Code section 20.9 sets forth the scope of negotiations in public employee bargaining:

> The 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 with respect to 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 and other matters mutually agreed upon. Negotiations shall also include terms authorizing dues checkoff for members of the employee organization and grievance procedures for resolving any questions arising under the agreement, which shall be embodied in a written agreement and signed by the parties. If an agreement provides for dues checkoff, a member's dues may be checked off only upon the member's written request and the member may terminate the dues checkoff at any time by giving thirty days' written notice. Such obligation to negotiate in good faith does not compel either party to agree to a proposal or make a concession.

Iowa Code § 20.9 (1983).

The Iowa Supreme Court has clearly held the legislative intent behind this statute is to exclusively define rather than describe the scope of bargaining. Fort Dodge Community School v. Public Employee Relations Board, 319 N.W.2d 181, 183

(Iowa 1982); Charles City v. Public Employee Relations Bd., 275 N.W.2d 766, 772 (Iowa 1979); City of Fort Dodge v. Iowa Pub. Employee Relations Bd., 275 N.W.2d 393, 397 (Iowa 1979). In Charles City, the supreme court distinguished the Iowa statute from the federal statute, the National Labor Relations Act (NLRA), which governs private sector bargaining and is to be broadly construed. After examining other case law and the legislative history of the statute, the court concluded that the Iowa legislature intended to adopt a restrictive approach to interpreting subjects listed in § 20.9. Charles City, 275 N.W.2d at 773.

The court reiterated this view that the list of mandatory subjects are to be restrictively applied and rejected an argument that a broader interpretation be used in Fort Dodge Community School v. Public Employee Relations Bd., 319 N.W.2d 181, 183 (Iowa 1982). The restrictive approach which the supreme court has taken is exemplified by the case in which they discussed the question of mandatory bargaining subjects. See, e.g. Fort Dodge Community School District v. Public Employment Relations Board, 319 N.W.2d 181, 183-84 (Iowa 1982) (cash incentive for early retirement not mandatory subject of bargaining as "wages" or "supplemental pay"); City of Mason City v. Public Employment Relations Board, 316 N.W.2d 851, 854 (Iowa 1982) (proposal that when police officers became eligible for medicare, employer would provide supplemental policy to medicare and pay premiums, pertained to "retirement systems," and thus, was not a mandatory subject of bargaining); Charles City Education Association v. Public Employment Relations Board, 291 N.W.2d 663, 668 (Iowa 1980) (proposal relating to nature of educational hours necessary for teachers to advance along salary schedule was not within term "wages," and thus, not a mandatory subject of bargaining). We believe that the court's analysis in these cases, the language of section 20.9, and the legislative history of the statute justify a restrictive interpretation of the terms in section 20.9. We reject appellant's argument that the court should adopt a less

restrictive approach when determining what constitutes a mandatory bargaining subject.

The appellant also argues that the "restrictive and narrow" standard set forth by the supreme court in Charles City is inconsistent with the statement in City of Fort Dodge v. Pub. Employee Relations Bd., 275 N.W.2d 393 (Iowa 1979), that the terms used in section 20.9 are to be applied in their "commonly understood meaning and context." Id. at 397. We find no inconsistency in the two statements. The court in Charles City used the "restrictive and narrow" terminology to distinguish the Iowa statute from the broader federal statute, the NLRA. The "commonly understood meaning" language is to be used as a guide in defining the specific terms within the statute.

Considering the statute, the legislative history, and the analysis in the above cited cases, we find no inconsistency in the interpretation of section 20.9 and find it unnecessary to alter the analysis used to determine if a term falls within the scope of section 20.9.

II. Reimbursement for Mileage Expenses and Medical Examinations as Mandatory Bargaining Subjects. To determine whether a proposal constitues a mandatory bargaining subject under section 20.9, a two-step analysis is required. First the proposal must come within the meaning of one of the terms listed in section 20.9; second, there must be no legal prohibition against the benefit. Charles City, 275 N.W.2d at 773. The appellant argues that reimbursements for medical examinations and mileage expenses come within the definition of "supplemental pay."

In City of Fort Dodge, the supreme court discussed whether a clothing allowance fell within the term "wage" or "supplemental pay" as defined in section 20.9. After a discussion of the legislative history of section 20.9, the court concluded that a clothing allowance would fall within the purview of "other economic benefits" language which had been proposed but eliminated before the

statute was enacted. City of Fort Dodge, 275 N.W.2d at 398. The court stated "the absence of that ["other economic benefits"] language from the act evidences the intent of the legislature to restrict the scope so as to exclude this subject from the list of mandatory bargaining." Id.

We find that the proposals requiring reimbursement for mileage expenses and physical examinations do not come within the "commonly understood meaning" of "supplemental pay." Like clothing allowances, they are more appropriately defined as "other economic benefits."

In Fort Dodge Community Schools, 319 N.W.2d 181 (Iowa 1982), the court defined the term supplemental pay:

> In City of Fort Dodge, 275 N.W.2d at 396-97, we noted "pay" and "wages" are used interchangeably. We believe that the term supplemental pay refers to pay for services rendered, and that the "service" rendered by early retirement is not the type of service envisioned by the legislature. Public employees, such as teachers, who are considered professional employees and thus not qualifying for "shift differentials" or "overtime compensation" under the act nevertheless may qualify for additional pay for services rendered over and above the pay for the primary duties of their contract. An obvious example is a teacher who performs extra duties as a coach.
>
> At any rate, the term supplemental pay means pay for rendering a service; it does not appear to be intended as payment for not working. In other words, it is pay based upon extra services and directly related to the time, skill, and nature of those services. It is not intended to be tied solely to a person's age, as the cash incentive plan is here.

Id. at 184.

In view of this interpretation of "supplemental pay" and the "other economic benefits" distinction made by the court in City of Fort Dodge, 275 N.W.2d at 398, we find that the proposals for reimbursement for mileage expenses and for physical examinations are not mandatory bargaining subjects under section 20.9.

The appellant also argues that the trial court inferred in its opinion that the mileage expense proposal is an illegal bargaining subject. The question of the legality of section 20.9 was not raised until the trial court alluded to it in its

findings of fact. The district court in reviewing the action of the Public Employee Relations Board (PERB) exercises only appellate jurisdiction. Public Employment Relations Bd. v. Stohr, 279 N.W.2d 286, 290 (Iowa 1979). Because the legality of the mileage proposal was not raised at the PERB hearing, it may not be urged for the first time here. Any discussion by the trial court or by this court is inappropriate. Meredith Corp. v. Iowa Dept. of Job Service, 320 N.W.2d 596, 597 (Iowa 1982); Buchholtz v. Iowa Dept. of Pub. Instruction, 315 N.W.2d 789, 794 (Iowa 1982).

The finding of the trial court that the proposals allowing reimbursement for mileage expenses and physical examinations are not mandatory bargaining subjects is affirmed.

AFFIRMED.