

**Impact of the Iowa Supreme Court's "Waterloo" Decision**  
*(Waterloo Community School District v. PERB, Waterloo EA, and Waterloo Educational Support Personnel)*  
**on the Teacher Quality Act ("TQA")**

As you know, in districts that have recognized ("certified") labor organizations, management (the school board/administration ) has a duty to bargain collectively with the recognized union/labor association. Iowa law lays out certain topics on which employers are required to bargain. These are called "mandatory subjects" of bargaining. Anything that's not a mandatory subject (and not illegal to bargain) is called a "permissive" subject, meaning if the topic comes up, management may choose to bargain if it wants to but doesn't have to bargain with the employees. If management chooses not to bargain on a subject that is a permissive subject, management can impose its position or preference on the issue without violating any rights of the employees under chapter 20 ("the Public Employment Relations Act," "PERA," or "collective bargaining law").

In September, the Iowa Supreme Court interpreted a relatively new provision of Iowa law to decide if its earlier decisions about evaluation criteria were still valid given the new language. (In the '80s, the Court held that evaluation criteria fell under the topic "evaluation procedures" and was thus, a mandatory subject.) Specifically, this fall the Court looked at the following statement from Iowa Code section 279.14 (2) (headed "Contracts with Teachers"):

***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.***

The question for the Supreme Court was whether the criteria for a school employee's evaluation is still a mandatory subject of bargaining or is now an "exclusive management right." The Court determined that, given the new language, "[management] must be free to control the evaluation criteria used to evaluate performance," and that the above quoted provision means exactly what it says: setting criteria and standards of performance is the exclusive right of management and need not be bargained. Management gets to decide which criteria are used to measure or determine standards of expected performance of employees. It is not legally necessary for the employer to bargain with the teachers or other employees over the criteria on the evaluation or the performance standards expected for continued employment. The employer *can* bargain, if that is its desire. But if management chooses not to bargain, the board/administration has the legal ability to establish, unilaterally, the criteria and standards for evaluating employees.

It is important to note that if standards and/or criteria are actually in the current master contract, or there is an evaluation instrument that's part of the current master contract, management can't ignore it nor change what has been bargained until a new contract comes up. In its opening proposal the employer should give the association notice that the criteria/standards language is permissive and won't be bargained nor included in a subsequent contract.

Under the new "Student Achievement and Teacher Quality Program" ("TQA"), Iowa Code chapter 284, the **content** of the evaluation for **beginning teachers** is established by law. That is, the eight Iowa Teaching Standards and forty-two criteria under those standards make up the standards and criteria on which beginning teachers (first and second year teachers) are evaluated in every Iowa public school district. That evaluation instrument, also uniform throughout the state, is called the "Comprehensive Evaluation." The district and the local bargaining unit ("Happy Hills Education Association," for example) have to negotiate regarding **procedures** for this evaluation, but not the standards or criteria. The evaluation itself is also not grievable, but can be challenged later, should the teacher be recommended for termination or denied a standard license.

Beginning in the 2004-05 school year, career teachers (anyone not then a beginning teacher) must be formally evaluated at least every three years. This evaluation is called a "Performance Review." The new law sets the *minimum* standards and criteria (same 8 and 42) for the Performance Review instrument, but it also specifies that management and the association "may negotiate" additional standards and criteria using collective bargaining. Note the use of the word "may" here. Since we know now that standards and criteria are not a mandatory subject of bargaining, the word "may" truly reflects the voluntary nature of that discussion between the district and the employee organization.

The TQA also states that the district and teachers "may negotiate evaluation **procedures** and grievance procedures" related to the evaluation. However, as "evaluation procedures" is a mandatory subject of bargaining, no doubt steps surrounding and evaluation *will be* brought up at the bargaining table.

In summary, the standards and criteria for **beginning teachers** are set by law and cannot be changed or increased by the district, either through unilateral action or bargaining. The minimum standards and criteria for **experienced ("career") teachers** are set by law and additional criteria "may" be imposed or negotiated; management's choice. The Iowa Supreme Court's recent decision is simply this: The Iowa Code establishes the employers' exclusive right to set standards of performance and thus, standards (and criteria) for evaluation are not mandatory subjects of bargaining.

- Employers may bargain with an employee organization to add standards and criteria for the Performance Review of career teachers, or
- Employers may unilaterally set or refuse to set additional standards and criteria (beyond the 8 & 42) for the Performance Review of career teachers.
- Employers may seek input from certified employees (whether or not they are part of the union), and choose to adopt their suggestions or not.
- Employers who have a master contract with criteria and/or instrument in it must use it until the master contract expires (as to language), unless there's a written agreement between management and the union to use only the state-mandated instrument. This may mean double evaluations for the next one or two school years if the union doesn't agree to drop the negotiated one.

Evaluation procedures (steps/processes) are mandatory subjects of bargaining. No employer is free to impose its will on employees who are organized under the PERA in the area of evaluation procedures. "Procedures" include things like the number of times the employee will be observed and for how long, whether or not the employee may reply to the evaluation, what timelines relate to replies, notification of/orientation about what instrument and what procedures will be used, notification of who will be doing the evaluation, when the evaluations will occur, when they won't, steps surrounding the pre- and post-observation conferences, deadlines, and whether documents would be shared with the employee, etc. If the employer and employee association do not reach agreement on a mandatory subject such as evaluation procedures through the bargaining process, disputes concerning mandatory subjects are resolved through impasse procedures (mediation and/or arbitration).

Evaluation criteria and standards of performance (the content of the evaluation) are not mandatory subjects of bargaining. Therefore, an employer may unilaterally determine the evaluation criteria or standards of performance without any obligation to bargain. If the employer wishes to discuss additional standards and criteria for career teachers, a broad-based committee of teachers (including non-members of the association) can be consulted without violating chapter 20 of the Code.

NOTE: The “**Model Framework for Designing a Local Staff Evaluation System Based on the Iowa Teaching Standards and Criteria**” put out by the Department of Education (authored by Tom McGreal, we understand) is *just an example* for districts to look at in moving towards the TQA system. We hope to see other models developed (perhaps by AEAs) to offer alternatives so that there won’t be one “ideal” evaluation system against which everyone’s district procedures will be measured. Don’t feel bound by the “Model.”