

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1009**

In the Matter of: American Federation of State, County, and Municipal Employees,
Council 5,
Relator,

vs.

Ramsey County,
Respondent,

State of Minnesota Public Employment Relations Board,
Respondent.

**Filed April 4, 2022
Affirmed
Reilly, Judge**

Public Employment Relations Board
File No. 21-U-019

Josie Hegarty, AFSCME Council 5, South St. Paul, Minnesota (for relator)

John J. Choi, Ramsey County Attorney, Elisabeth Brady, Assistant County Attorney, St. Paul, Minnesota (for respondent county)

Jill Kielblock, Interim Executive Director, Public Employment Relations Board, St. Paul, Minnesota (respondent)

Considered and decided by Slieter, Presiding Judge; Reilly, Judge; and Rodenberg,
Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

REILLY, Judge

In this certiorari appeal, relator union challenges a decision by respondent Public Employment Relations Board to dismiss a charge of unfair labor practice the relator union brought against respondent Ramsey County. We affirm.

FACTS

Relator American Federation of State, County, and Municipal Employees, Council 5 (the union) represents nearly all of the 80 employees of respondent Ramsey County's Workforce Solutions Department, which provides employment and training services to job seekers and businesses. The most recent collective bargaining agreement covering department employees was in effect from January 2018 through December 2020.

The parties began negotiating a new agreement in September 2020. During negotiations, the county proposed updates to the Alternative Work Schedule Policy in an appendix to the agreement (the policy). The policy defined regular business hours and identified when deviations may be authorized. The policy stated expressly: "a workday cannot exceed 10 hours." The county proposed removing that language, asserting that it was redundant because the policy specifically defined work schedules as either 8 hours per day/5 days per week or 10 hours per day/4 days per week. The union objected to four items in the county's proposed changes to the policy, including the proposal to remove the language that "a workday cannot exceed 10 hours." Although the county agreed to add back the language that "a workday cannot exceed 10 hours," it did not accept all four of the union's demands and the union responded that its four objections were "all or nothing."

In a mid-November 2020 email exchange, a union representative offered edits to the county's proposed changes to the policy. The county considered the union's edits but rejected them in substance. The union responded, "Unfortunately, if the employer is unwilling to accept the union's edits, we will withdraw the issue." On a shared master tracking sheet titled "Issues and Current Status," mediators noted under the "Hours of Work" issue, "[County] drafted policy; issue dropped by union 11/19/2020." Later the parties submitted a document titled "Final Resolutions on All Issues." In the "Hours of Work" section, it stated that the policy update had been shared with the union and the issue had been resolved.

The parties reached a tentative agreement in December. The union submitted the proposed contract to its members for ratification. But because the final language of the new agreement was not yet available, the union summarized the changes to its members, noting that the policy was still being updated. The union ratified the new agreement in mid-December and the county approved it on December 22. When the final written agreement was circulated to the parties, the union realized that the language "a workday cannot exceed 10 hours" had been removed from the policy. Based on that omission, the union declined to sign the written agreement.

The union filed unfair-labor-practice charges with respondent Public Employment Relations Board (PERB)¹ against the county alleging, in part, that the county failed to

¹ PERB investigates and resolves claims of unfair labor practice under the Public Employment Labor Relations Act (PELRA) for all public employers and their employees across the State of Minnesota. Minn. Stat. §§ 179A.01-.60 (2020).

negotiate in good faith on a subject of mandatory bargaining. The union argued that it rejected the county's proposed changes to the policy and the proposed changes were dropped by both parties.

PERB observed that the union appeared to believe that when it withdrew "the issue" of the 10-hour workday, it withdrew it on behalf of both parties. The union also believed that its withdrawal of "the issue" would preclude any amendments to the policy relating to the union's four original objections. PERB found that the union did not have the authority to withdraw the county's proposal. PERB also found that the county reasonably interpreted the union's November 19 email to say that it was dropping its opposition to the four earlier-disputed items. PERB concluded that the union's claim had no reasonable basis in law or fact and dismissed the union's unfair-labor-practice charge.

Relator appeals to this court by writ of certiorari.

DECISION

I. Great deference is afforded to agency decisions.

We review decisions from agencies such as PERB to determine "whether the order or determination was arbitrary, oppressive, unreasonable, fraudulent, under an erroneous theory of law, or without any evidence to support it." *Eneh v. Minn. Dep't of Health*, 906 N.W.2d 611, 614 (Minn. App. 2018). An administrative agency's decision is presumed correct and we "defer to an agency's conclusions in the area of its expertise." *In re Reichmann Land & Cattle, LLP*, 867 N.W.2d 502, 512 (Minn. 2015) (quotation omitted). When we review the decision of an administrative agency, we will reverse or modify the decision only if the decision was unconstitutional, in excess of the agency's statutory

authority or jurisdiction, based on unlawful procedure, based on an error of law, unsupported by substantial evidence, or arbitrary or capricious. Minn. Stat. § 14.69 (2020); *see also Eneh*, 906 N.W.2d at 614.

Applying this deferential standard, we view the agency’s factual findings “in the light most favorable to the decision” and “will not disturb those findings if there is evidence reasonably tending to sustain them.” *Lewison v. Hutchinson*, 929 N.W.2d 444, 451 (Minn. App. 2019) (quotations omitted). In determining whether a decision is arbitrary or capricious we look at whether the agency “(a) relied on factors not intended by the legislature; (b) entirely failed to consider an important aspect of the problem; (c) offered an explanation that runs counter to the evidence; or (d) the decision is so implausible that it could not be explained as a difference in view or the result of the agency’s expertise.” *In re Schmalz*, 945 N.W.2d 46, 54 (Minn. 2020) (quotation omitted).

II. PERB’s decision is not arbitrary or capricious and is supported by substantial evidence in the record.

On appeal, the union argues that PERB erred in three ways. First, the union asserts that because the policy deals with a subject of mandatory bargaining, mutual agreement was needed to amend it. Second, the union contends that the county waived any right it may have had, as a matter of inherent managerial policy, to alter the policy without negotiation. Finally, the union argues that even if the policy falls within the county’s inherent managerial policy, it cannot be modified at will. We address the union’s first argument in section A, and the second and third arguments in section B.

A. Mandatory subject of bargaining

The union first contends that the policy deals with a mandatory subject of bargaining and that the county failed to argue in good faith when it removed the language about allowable hours of work absent agreement by the union. Under PELRA, public employers are prohibited from “refusing to meet and negotiate in good faith with the exclusive representative of its employees.” Minn. Stat. § 179A.13, subd. 2(5) (2020). A unilateral change by an employer to the terms and conditions of employment violates employees’ collective bargaining rights when the change affects a mandatory bargaining term and conflicts with the parties’ past practices. *Law Enf’t Labor Servs., Inc. v. Sherburne County*, 695 N.W.2d 630, 637 (Minn. App. 2005). But the obligation to meet and negotiate in good faith does not require a public employer to agree or concede to proposed changes. Minn. Stat. § 179A.07, subd. 2(a) (2020).

Here, the record shows that the parties actively negotiated changes to the policy from September to November 2020. The county first proposed changes to the policy language in September 2020, including removing the language that a workday cannot exceed 10 hours. PERB found that the county reasonably believed the language to be redundant because the policy already specified eight-hour days or ten-hour days. The union voiced its disagreement and requested that the language be kept in the policy. The union also suggested other modifications to the policy and the county agreed to incorporate some of them, but the union maintained that the changes were “all or nothing.” Thus, there is no evidence in the record that the county refused to negotiate in good faith over the language in the policy.

Additionally, a union may waive the statutory right to negotiate using “clear and unmistakable language.” *Law Enf’t Labor Servs., Inc.*, 695 N.W.2d at 638 (quotation omitted). In November 2020, the county sent the union an updated draft of the policy that did not include the language “a workday cannot exceed 10 hours.” The union sent a counteroffer, the county rejected it in substance, and the union then withdrew “the issue.” PERB found that the county reasonably believed that the union withdrew its objections when the union emailed the county stating: “if the employer is unwilling to accept the union’s edits, we will withdraw the issue.” Mediators noted on a master tracking sheet titled “Issues and Current Status,” after the subject line Hours of Work: “[County] drafted policy; issue dropped by union 11/19/2020.”

The union argues that when it “withdrew” the issue of the length of the workday, it did not waive the right to negotiate on the issue. But we agree with PERB that it was reasonable for the county to interpret “we will withdraw the issue” in the context of other records and communications to mean that the union no longer contested the issue and waived its objection. For these reasons, PERB’s finding that the county did not unilaterally change the agreed-upon language is supported by substantial evidence and is not arbitrary or capricious.

B. Employee work hours as a matter of inherent managerial policy

The union also argues that PERB erred in characterizing employee work hours as a matter of inherent managerial policy such that the county did not have to negotiate before making changes. *See* Minn. Stat. § 179A.07, subd. 1 (2020) (providing that public employers need not negotiate over “matters of inherent managerial policy”). But the union

appears to be misreading PERB's analysis about whether the policy involves a matter of inherent managerial policy. PERB determined that the county did not unilaterally change the parties' agreement, and, in a footnote, stated simply that "[w]e express no opinion on whether [the policy] . . . was a previously-negotiated Memorandum of Understanding or a unilateral employer policy within its managerial authority under PELRA." Although PERB cites cases that discuss the length and timing of shifts as matters of inherent managerial policy, PERB expressly disclaimed a determination whether the original policy fell within inherent managerial policy. And the county does not appear to argue that the policy is not subject to mandatory bargaining. Thus, whether the policy could fall within inherent managerial policy is not properly before us. For the same reason, we need not resolve the union's third argument that, if the change was made as a matter of inherent managerial policy, it was procedurally defective. Because there is no decision or argument that the policy change was made as a matter of inherent managerial policy, resolution of this argument is unnecessary and would require speculation.

Based on the reasons above, we conclude that PERB's finding that the union waived its right to bargain on changes to language in the policy is supported by substantial evidence and is not arbitrary or capricious.

Affirmed.