IN THE SUPREME COURT OF IOWA

No. 22-0468

Polk County No. CVCV061533

CITY OF AMES,

Petitioner-Appellant,

vs.

IOWA PUBLIC EMPLOYMENT RELATIONS BOARD,

Respondent-Appellee.

APPEAL FROM THE IOWA DISTRICT COURT FOR POLK COUNTY
HONORABLE SCOTT D. ROSENBERG

FINAL BRIEF OF PETITIONER-APPELLANT CITY OF AMES

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ROUTING STATEMENT

This case should be retained by the Iowa Supreme Court to clarify as a matter of first impression whether Iowa Code section 20.32 applies to non-transit employees and requires an employer to provide public safety bargaining rights to non-transit employees who are in a bargaining unit comprised of at least thirty percent transit employees. Iowa R. App. P. 6.1101(2)(c).

STATEMENT OF THE CASE

This is a judicial review proceeding pursuant to Iowa Code section 17A.19. The case comes to the Court from a district court order affirming a declaratory order issued by the Iowa Public Employment Relations Board ("PERB") which determined that Iowa Code section 20.32 applies to non-transit employees and requires the City of Ames ("City") to provide public safety bargaining rights to non-transit employee who are in a bargaining unit comprised of at least thirty percent transit employees. App. 297-336; 383-289.

On January 17, 2020, the City filed its Petition for Declaratory Order with PERB pursuant to Iowa Code section 17A.9 and Iowa Admin. Code r. 621-10.1 (17A, 20). App. 6-60. The Petition requested a declaratory order clarifying the interplay between the 2017 amendments to chapter 20 (House File 291) and the requirement under 49 U.S.C. § 5333(b) that a recipient of federal transit funds "preserve the rights, privileges, and benefits under existing collective bargaining agreements" for transit employees within a collective bargaining unit. *Id.* Among other things, the City requested clarification on whether Iowa Code section 20.32 applies to the City's Blue-Collar bargaining unit's transit employees, and whether non-transit employees included in the Blue-Collar unit are to be treated as transit employees, public

safety employees, or non-public safety employees for purposes of Iowa Code chapter 20. App. 34 (¶ 4(a), (c)).

The International Union of Operating Engineers, Local 234 ("IUOE"), the union representing the City's Blue-Collar unit, and AFSCME Iowa Council 61 ("AFSCME"), an interested party, were granted leave to intervene in the declaratory order proceeding and resisted the City's Petition. App. 297; 307-308. Following briefing and oral argument, PERB issued its declaratory order on February 16, 2021. App. 297-336. PERB found that (1) Iowa Code section 20.32 does not apply to the transit employees because it fails to preserve funding as the legislature intended; (2) Iowa Code section 20.27 applies to render the 2017 amendments to chapter 20 inapplicable to transit employees, (3) Iowa Code section 20.32 *does* apply to non-transit employees, and (4) pursuant to Iowa Code sections 20.32 and 20.9(1), non-transit employees in a bargaining unit comprised of at least thirty percent transit employees are entitled to the expanded public safety bargaining rights. App. 315-316; 322; 324.

On March 18, 2021, the City filed a Petition for Judicial Review in the Iowa District Court for Polk County. The City requested that the district court reverse PERB's determination that Iowa Code section 20.32 applies to non-transit employees and requires the City to afford public safety bargaining

rights to non-transit employees who are in a bargaining unit comprised of at least thirty percent transit employees. App. 337-382. IUOE and AFSCME both intervened in the judicial review proceeding. App. 384. Following briefing and oral argument, the district court issued its ruling on February 12, 2022, affirming PERB's declaratory order in full. App. 383-389. The City filed a timely notice of appeal on March 10, 2022. App. 390-392.

STATEMENT OF FACTS

The facts of this matter are undisputed. App. 354. The City operates a public transit system and receives federal funding administered by the Federal Transit Administration. App. 343-344. Section 13(c) of the Federal Transit Act (codified at 49 U.S.C. § 5333(b)) requires the City, as a recipient of federal transit funds, to provide certain legal protections for transit employees in a collective bargaining unit. 49 U.S.C. § 5333(b); App. 345. These legal protections include an assurance that transit employees' rights, privileges, and benefits under existing collective bargaining agreements are preserved and that there is a continuation of collective bargaining rights for them. 49 USC § 5333(b)(2)(A) and (B); App. 345. These legal protections are commonly referred to as "Section 13(c) agreements or protections." App. 345.

The United States Department of Labor, Office of Labor-Management Standards ("Department" or "Department of Labor") is the agency charged

with determining whether parties have an agreement that meets the requirements of Section 13(c). *See* 29 C.F.R. Part 215; App. 345. Prior to the Department certifying to the Federal Transit Administration that a transit agency seeking federal funds has complied with the requirements of Section 13(c), the Department refers the grant application to interested parties, including labor unions representing affected transit employees. 29 C.F.R. § 215.3(b); App. 345. Those parties may object that there are "changes in legal or factual circumstances that may materially affect the rights or interest of employees" or "material issues that may require alternative employee protections under 49 U.S.C. Section 5333(b)." 29 C.F.R. §§ 215.3(d)(3); App. 345. If the objection is deemed sufficient, the Department will direct the parties to engage in good faith negotiations to resolve the objection. 29 C.F.R § 215.3(d)(6); App. 346. If the objection is resolved and the Department determines the parties' agreement satisfies the requirements of 49 U.S.C. § 5333(b), the Department will issue a certification of compliance to the Federal Transit Administration. 29 C.F.R § 215.3(d)(7); App. 346.

IUOE has been certified as the exclusive bargaining representative for the City's Blue-Collar unit since 1977. App. 61-86; 298. The Blue-Collar unit includes both transit employees and non-transit employees. App. 8 (¶ c); 298. The transit employees constitute more than thirty percent of the

employees in the bargaining unit. *Id.* Previously, the City and IUOE had a Section 13(c) agreement which satisfied the requirements of 49 U.S.C. § 5333(b). App. 300.

However, in February 2017, the Iowa legislature enacted House File 291, which significantly amended Iowa Code chapter 20. 2017 Iowa Acts ch. 2; App. 87-129. These amendments "altered the scope of mandatory collective bargaining and arbitration and eliminated payroll deductions for all union dues." *AFSCME Iowa Council 61 v. State*, 928 N.W.2d 21, 28 (Iowa 2019). "House File 291 gave public employees different bargaining rights depending on whether they are part of a bargaining unit with at least thirty percent 'public safety employees.'" *Id.* For a bargaining unit with at least thirty percent public safety employees, the union "may exercise broad bargaining rights on behalf of all of its member, including those who are not public safety employees." *Id.* (citing Iowa Code § 20.9(1)). The union may bargain on topics such as wages, hours, vacations, insurance, holidays, leaves of absence, shift differentials, overtime compensation, supplemental pay, seniority, transfer procedures, job classification, health and safety matters, evaluation procedures, staff reduction procedures, in-service training, and grievance procedures. *Id.* at 28-29. "In sharp contrast, for unions representing a bargaining unit with less than thirty percent public safety employees, House

File 291 limited mandatory bargaining … to the subject of 'base wages and other matters mutually agreed upon.'" *Id.* at 29.

House File 291 also made changes to chapter 20 that affected the bargaining rights of all public employees, including public safety employees. It eliminated the right to bargain over union dues checkoffs and to pay union dues through payroll deductions and imposed a retention and recertification election requirement at the expiration of each collective bargaining agreement. Iowa Code §§ 20.9(3); 20.15(2). House File 291 also created a new section of chapter 20 entitled "Transit employees—applicability":

> All provisions of this chapter applicable to employees described in section 20.3, subsection 11, shall be applicable on the same terms and to the same degree to any transit employee if it is determined by the director of the department of transportation, upon written confirmation from the United States department of labor, that a public employer would lose federal funding under 49 U.S.C. § 5333(b) if the transit employee is not covered under certain collective bargaining rights.

Iowa Code § 20.32. This provision is similar to a pre-existing section of chapter 20 entitled "Conflict with federal aid":

> If any provision of this chapter jeopardizes the receipt by the state or any of its political subdivisions of any grant-in-aid funds or other federal allotment of money, the provision of this chapter shall, insofar as the fund is jeopardized, be deemed to be inoperative.

Iowa Code § 20.27.

After chapter 20 was amended, IUOE filed an objection to the City's FTA grant application, asserting that application of House File 291 to transit employees was incompatible with Section 13(c) protections. App. 302. The Department of Labor directed the parties to negotiate a resolution. *Id.* On April 25, 2017, the Iowa Department of Transportation sent a letter to the Department of Labor stating that if any provision of HF 291 would negatively impact the collective bargaining rights of transit employees in violation of 49 U.S.C. § 5333(b), such "impact could be resolved under an agreement between the parties to mutually deem any such provisions of HF 291 'inoperative' under Iowa Code § 20.27." App. 247-249; 302. The Iowa Department of Transportation suggested that "the path provided by Iowa Code § 20.27 will allow compliance with 49 U.S.C. § 5333(b) and therefore, the grants involved should be released." App. 249; 302.

On June 7, 2017, the Department of Labor issued an interim certification. The Department concluded that "application of HF 291 to transit employees, whether they are deemed public safety or public non-safety employees, would render the employer unable to comply with the requirements of 49 U.S.C. § 5333(b)(1) and (2)…." App. 252-253; 302-303. The Department reasoned that because House File 291 eliminated certain mandatory subjects of bargaining and imposed a retention and recertification

election requirement even as to public safety employees, application of the public safety bargaining rights to transit employees would not "preserve the rights, privileges, and benefits under existing collective bargaining agreements" as required by 49 U.S.C. § 5333(b)(2)(A). App. 253; 302-303. However, the Department also concluded, consistent with the position of the Iowa Department of Transportation, "that Section 20.27 provides authority under Iowa law for [the parties] to comply with Section 5333(b)." App. 253; 303. Accordingly, the Department of Labor conditioned its certification on the application of Iowa Code section 20.27 to deem provisions of House File 291 inoperative as to transit employees. *Id.*

On August 9, 2017, the City and IUOE advised the Department of Labor that the parties had reached an agreement that "[i]n accordance with Section 20.27 of Iowa Code Chapter 20, any provision or provisions of the law that jeopardize federal funding shall be deemed inoperative and thus inapplicable to transit employees represented by IUOE Local 234 who are covered under the parties' Section 13(c) protective arrangements," and that any new collective bargaining agreements would be based on "the same conditions that existed prior to July 1, 2016…." App. 262; 303-304.

On November 22, 2017, the Department of Labor issued a final certification detailing the protective arrangements applicable to the City's transit employees, including the following:

> In accordance with Section 20.27 of Iowa Code Chapter 20, the provisions of Act 2017 (87 G.A.), H.F. 291, effective February 17, 2017, shall be deemed inoperative and thus inapplicable to the City of Ames' transit employees who are covered under the above protective arrangements and the terms and conditions of this certification letter; and that in lieu of these inoperative and inapplicable provisions, the provisions of Iowa Code Chapter 20 in effect on February 16, 2017, shall be deemed operative and applicable to said transit employees.

App. 259-261; 304. The final certification further stated that "[t]he protective arrangements certified by the Secretary of Labor are intended for the primary and direct benefit of transit employees in the service area of the project." App. 260.

The Director of the Iowa Department of Transportation has not made the determination contemplated by Iowa Code section 20.32 because the Department of Labor would not provide written confirmation that application of public safety bargaining rights to transit employees was necessary to preserve federal funds. App. 250-251.

ARGUMENT

I. THE DISTRICT COURT AND PERB ERRED IN APPLYING SECTION 20.32 TO NON-TRANSIT EMPLOYEES AND IN CONCLUDING THAT NON-TRANSIT EMPLOYEES ARE ENTITLED TO EXPANDED PUBLIC SAFETY BARGAINING RIGHTS IF THE BARGAINING UNIT IS COMPRISED OF AT LEAST THIRTY PERCENT TRANSIT EMPLOYEES.

A. Preservation of Error

The City preserved error by arguing its positions to, and obtaining rulings from, PERB and the district court.

B. Standard of Review

The standard of review under Iowa Code chapter 17A depends on whether the agency is clearly vested with interpretative authority. *See* Iowa Code § 17A.19(10)(c), (l). With the 2017 amendment to Iowa Code section 20.6, PERB is no longer vested with interpretive authority over Iowa Code chapter 20. *United Electrical, Radio & Machine Workers of America v. Iowa Public Employment Relations Board*, 928 N.W.2d 101, 108 (Iowa 2019). Accordingly, PERB's interpretation of chapter 20 is reviewed for correction of errors at law. *Id.*; Iowa Code § 17A.19(10)(c).

C. Argument

Both PERB and the district court found that Iowa Code section 20.32 does not apply to transit employees in the Blue-Collar unit. The City agrees

with this conclusion. Section 20.32 purports to give transit employees the same bargaining rights available to public safety employees under the 2017 amendments to chapter 20 if necessary to protect the receipt of federal funds. However, the United States Department of Labor concluded that giving transit employees the bargaining rights available to public safety employees under the amended chapter 20 would not comply with 49 U.S.C. § 5333 because there would still be a diminution in the transit employees' collective bargaining rights. App. 252-253. Thus, as found by PERB, "[s]ection 20.32 does not apply to the transit employees because it fails to preserve funding as the legislature intended." App. 315.

Instead, both PERB and the district court found that Iowa Code section 20.27 applies to render the 2017 amendments to chapter 20 inapplicable to transit employees. App. 316; 387. The City agrees with this conclusion as well. Section 20.27 states that if any provision of chapter 20 jeopardizes the receipt of federal funds, then such provision shall be deemed inoperative. Iowa Code § 20.27. The Department of Labor concluded that "application of HF 291 to its transit employees, whether they are deemed public safety or public non-safety employees, would render [the City] unable to comply with the requirements of 49 U.S.C. § 5333(b)(1) and (2)…." App. 252-253. Accordingly, as PERB found, "the application of Iowa Code section 20.27 is

warranted to deem all House File 291 amendments inapplicable and inoperative to transit employees" and thus "the statute applicable to the transit employees is Iowa Code chapter 20 in effect as of February 16, 2017." App. 316.

PERB went on to find, however, that section 20.32 *did* apply to non-transit employees. App. 322 ("A reasonable interpretation of section 20.32 warrants its application to non-transit employees to determine their bargaining rights."). PERB then applied the thirty percent threshold of Iowa Code section 20.9(1) and held that "[n]on-transit employees who are included in units comprised of thirty percent or more transit employees are in a public safety unit with corresponding bargaining rights." App. 323-324. The district court affirmed this holding. App. 387-388 ("Simply put, PERB correctly engaged in the proper analysis for determining the substantive collective bargaining rights of a bargaining unit that includes both transit and non-transit employees….").

The district court and PERB erred in so holding because the conditions precedent for application of section 20.32 were not satisfied, the plain and unambiguous language of section 20.32 confirms that it only applies to transit employees, and the rules of statutory construction do not support their interpretation.

1. The conditions precedent of Iowa Code § 20.32 were not satisfied.

PERB and the district court erred in applying Iowa Code section 20.32 because the conditions precedent of that statute were not satisfied. Section 20.32 states:

> All provisions of this chapter applicable to employees described in section 20.3, subsection 11, shall be applicable on the same terms and to the same degree to any transit employee *if it is determined by the director of the department of transportation, upon written confirmation from the United States department of labor, that a public employer would lose federal funding under 49 U.S.C. § 5333(b) if the transit employee is not covered under certain collective bargaining rights.*

Iowa Code § 20.32 (emphasis added).

The quoted language clearly creates a condition precedent to application of the statute. *See*, *e.g.*, 13 Williston on Contracts § 38:16 (4th ed.) (use of the word "if" connotes an intent to create a condition precedent). Specifically, the public safety bargaining rights shall apply to transit employees only if the director of the Iowa Department of Transportation determines, based on written confirmation from the United States Department of Labor, that the employer would lose federal funds if the transit employee is not provided such rights.

In this case, the Director of the Iowa Department of Transportation did *not* determine that the City would lose federal funds unless public safety

bargaining rights were provided to transit employees. To the contrary, the Department of Labor concluded that applying public safety bargaining rights to transit employees would itself result in the City losing federal funds. App. 252-253. The Department reasoned that because the 2017 amendments to chapter 20 eliminated certain mandatory subjects of bargaining and imposed a retention and recertification election requirement even as to public safety employees, application of the public safety bargaining rights to transit employees would not "preserve the rights, privileges, and benefits under existing collective bargaining agreements" as required by 49 U.S.C. § 5333(b)(2)(A). App. 253.

Because the United States Department of Labor would not provide written confirmation that application of public safety bargaining rights to transit employees was necessary to preserve federal funds, the Director of the Iowa Department of Transportation had "no ability to complete the determination required in Iowa Code § 20.32 to protect transit employees." App. 250. Thus, the conditions precedent of Iowa Code section 20.32 were not satisfied. When a statute contains a clear and unambiguous condition precedent, the Court should not search for meaning beyond the express terms of the statute and should "simply give effect to the language of [the statute] as written." *Osage Conservation Club v. Bd. of Sup'rs of Mitchell Cty.*, 611

N.W.2d 294, 298 (Iowa 2000). Accordingly, PERB and the district court erred in holding that section 20.32 applies.

2. The plain and unambiguous language of Iowa Code § 20.32 establishes that it only applies to transit employees.

Even if the conditions precedent of section 20.32 were met, PERB and the district court erred in applying its protections to non-transit employees. Section 20.32 states that if the conditions precedent are satisfied then "[a]ll provisions of this chapter applicable to employees described in section 20.3, subsection 11, shall be applicable on the same terms and to the same degree *to any transit employee*." Iowa Code § 20.32 (emphasis added). Thus, by its express terms, section 20.32 only applies the expanded public safety bargaining rights "to any transit employee."

PERB and the district court nonetheless engaged in statutory construction to conclude that the expanded public safety bargaining rights also apply to non-transit employees who are in a bargaining unit with at least thirty percent transit employees. App. 323-324; 387-388. This was error. Before a court engages in any statutory construction, the court must determine whether the statutory language is ambiguous. *Chavez v. MS Technology LLC*, 972 N.W.2d 662, 667 (Iowa 2022). "A statute is ambiguous if reasonable minds could differ or be uncertain as to the meaning of the statute." *Carolan v. Hill*, 553 N.W.2d 882, 887 (Iowa 1996). If the statute is unambiguous, the court's

inquiry ends with the plain language of the statute. *State v. Zacarias*, 958 N.W.2d 573, 581 (Iowa 2021).

> The only legitimate purpose of statutory construction and interpretation is to ascertain the legislative intent, but when the language of the statute is so clear, certain, and free from ambiguity and obscurity that its meaning is evident from a mere reading, then the canons of statutory construction are unnecessary, because there is no need of construction and interpretation. We need not, indeed we should not, then search beyond the wording of the statute.

Consol. Freightways Corp. of Del. v. Nicholas, 258 Iowa 115, 121, 137 N.W.2d 900, 904-05 (1965). Thus, "[p]recise, unambiguous language will be given its plain and rational meaning in light of the subject matter." *Carolan*, 553 N.W.2d at 887.

Here, there is no ambiguity in section 20.32. The statute plainly states that the public safety bargaining rights only apply "to any transit employee." Reasonable minds could not differ on the meaning of "to any transit employee." It means that those rights apply to transit employees, not non-transit employees. The Court "cannot, under the guise of construction, enlarge or otherwise change the terms of the statute as the legislature adopted it." *Carolan*, 553 N.W.2d at 887. Accordingly, PERB and the district court should have simply applied the plain language of the statute and held that non-

transit employees are not entitled to public safety bargaining rights under section 20.32 regardless of the composition of the bargaining unit.

3. The rules of statutory construction do not support PERB's interpretation that Iowa Code § 20.32 applies to non-transit employees.

Even if the statute was subject to statutory construction, PERB and the district court erred in interpreting section 20.32 to apply to non-transit employees. "The ultimate goal of statutory construction is to give effect to the intent of the legislature." *Carolan*, 553 N.W.2d at 887. In determining that intent, the Court may consider (1) the object sought to be attained, (2) the circumstances under which the statute was enacted, (3) the legislative history, (4) the common law or former statutory provisions, including laws upon the same or similar subjects, (5) the consequences of a particular construction, (6) the administrative construction of the statute, and (7) the preamble or statement of policy. *Id.* (citing Iowa Code § 4.6). However, the Court must be "guided by what the legislature actually said, rather than what it should or might have said." *Id.* at 88 (citing Iowa R. App. P. 14(f)(13)). The Court should not "speculate as to the probable legislative intent apart from the wording used in the statute." *Id.* at 87. The words of the statute should be interpreted "fairly and sensibly in accordance with the plain meaning of the words used by the legislature." *Id.*

Applying these principles, it was error for PERB and the district court to interpret section 20.32 as applying to non-transit employees. First, the legislature plainly stated in section 20.32 that the expanded public safety bargaining rights would apply "to any transit employee." The legislature did not state that such rights would apply to non-transit employees in a bargaining unit comprised of at least thirty percent transit employees. As noted above, a statute must be interpreted according to what the legislature actually said, not what it might have said. *Carolan*, 553 N.W.2d at 887. The legislature knows how to apply statutory provisions on a bargaining unit basis. *See* Iowa Code § 20.9(1) (providing expanded bargaining rights for "a bargaining unit with at least thirty precent of members who are public safety employees…."). "[W]hen the legislature includes particular language in some sections of a statute but omits it in others, we presume the legislature acted intentionally." *State v. Shorter*, 945 N.W.2d 1, 8 (Iowa 2020). Thus, if the legislature intended section 20.32 to apply to non-transit employees in bargaining units comprised of at least thirty percent transit employees, it would have expressly said so like it did in section 20.9(1). *See Oyens Feed & Supply, Inc. v. Primebank*, 808 N.W.2d 186, 194 (Iowa 2011) ("If the legislature had intended to subordinate a dealer's priority under section 570A.5(3), it would have expressly said so as it did in subsection (2).").

Second, PERB's interpretation is inconsistent with the overall intent of the 2017 amendments to chapter 20 and the intent of section 20.32 specifically. As the Iowa Supreme Court has previously noted, "the changes in the 2017 amendments were plainly designed to, and have the effect of, restricting collective bargaining rights." *United Elec., Radio & Mach. Workers of Am. v. Iowa Pub. Emp. Rels. Bd.*, 928 N.W.2d 101, 117 (Iowa 2019); *see also UE Loc. 893/IUP v. State*, 928 N.W.2d 51, 57 (Iowa 2019) ("House File 291 made significant amendments to PERA by substantially limiting the number of mandatory bargaining topics for most public employees, including the employees in UE's bargaining units."). Interpreting section 20.32 broadly to give expanded bargaining rights to non-transit employees is contrary to the legislature's intent to restrict bargaining rights of most public employees. Further, the clear intent of section 20.32 is to provide expanded bargaining rights to transit employees only if necessary to preserve federal funds. As PERB recognized, however, "federal funding is not tied to collective bargaining protections for the unit or its non-transit employees." App. 320; *see also* 49 U.S.C. § 5333(b)(1) (providing legal protections for "employees affected by the assistance…."). Thus, PERB's interpretation of section 20.32 as applying to non-transit employees does not further the legislative intent of section 20.32.

Third, PERB's primary rationale for interpreting section 20.32 as applying to non-transit employees was to "maintain[] consistent bargaining rights within a unit." App. 322. However, PERB's interpretation does not, in fact, accomplish that goal. Under PERB's interpretation, transit employees receive the pre-2017 chapter 20 bargaining rights while non-transit employees receive either the expanded public safety bargaining rights or the more restricted non-public safety bargaining rights, depending on whether the bargaining unit has at least thirty percent transit employees. Either way, there will be inconsistent bargaining rights as between transit and non-transit employees within the bargaining unit. Accordingly, this is not a valid basis for interpreting section 20.32 as applying to non-transit employees.

Finally, PERB determined that section 20.32 should apply to non-transit employees because a different interpretation "would render section 20.32 irrelevant," and "[w]e presume the legislature intended every part of the statute for a purpose…." App. 322 (citing *Rojas v. Pine Ridge Farms, LLC*, 779 N.W.2d 223, 231 (Iowa 2010)). Contrary to PERB's reasoning, interpreting section 20.32 as not applying to non-transit employees does not render that provision surplusage. If the Department of Labor had determined that giving transit employees public safety bargaining rights would preserve federal funding, then section 20.32 would have applied and been fully

effective. However, because the Department found that applying public safety bargaining rights to transit employees would itself result in the City losing federal funds, section 20.32 did not apply and instead section 20.27 applied to make all of the 2017 amendments to chapter 20 inapplicable to transit employees. This is not an instance of statutory surplusage; it is a failure of statutory conditions precedent.

Even if section 20.32 could be considered surplusage, the Iowa Supreme Court has recognized that "the rule against interpreting statutes so they have surplusage is not the be all and end all." *Marek v. Johnson*, 958 N.W.2d 172, 177 (Iowa 2021). Rather, it is "merely a presumption" of statutory construction. *Id.* at n. 4 (citing Iowa Code § 4.4). If a statute is unambiguous, the Court stops there and does not resort to such a rule of construction. *Id.* at 177. As discussed above, section 20.32 is unambiguous that it only applies to transit employees. Accordingly, the presumption against surplusage is not a basis for interpreting section 20.32 as applying to non-transit employees.

Because the rules of statutory do not support PERB's interpretation, PERB and the district court erred in holding that section 20.32 applies to non-transit employees.

CONCLUSION

PERB and the district court erred in interpreting section 20.32 as applying to non-transit employees and requiring the City to provide expanded public safety rights to non-transit employees in a bargaining unit comprised of at least thirty percent transit employees. The conditions precedent for application of section 20.32 were not satisfied, the plain and unambiguous language of section 20.32 confirms that it only applies to transit employees, and the rules of statutory construction are contrary to PERB's interpretation. Accordingly, the decisions of PERB and the district court should be reversed, and the Court should hold that section 20.32 does not apply and has no application to non-transit employees and the City is not required to provide public safety bargaining rights to non-transit employees even if the bargaining unit contains at least thirty percent transit employees.

Respectfully submitted,

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REQUEST FOR ORAL ARGUMENT

City of Ames requests to be heard in oral argument on this appeal.

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because it contains 4,769 words, excluding the parts of the brief exempted by the rule.

2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because it has been prepared in a proportionally spaced typeface using Microsoft Word 14-point Times New Roman.

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CERTIFICATE OF FILING AND SERVICE

I certify that on August 23, 2022, the foregoing Final Brief of Appellant was electronically filed with the Iowa Supreme Court by using the EDMS system. I further certify that all parties or their counsel of record are registered as EDMS filers and will be served by the EDMS system.

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