

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 REPLY BRIEF OF
PETITIONER-APPELLANT CITY OF AMES**

Jason M. Craig (AT0001707)
Aaron J. Hilligas (AT0013205)
AHLERS & COONEY, P.C.
100 Court Avenue, Suite 600
Des Moines, Iowa 50309-2231
Telephone: 515/243-7611
Facsimile: 515/243-2149
Email: jcraig@ahlerslaw.com
ahilligas@ahlerslaw.com

TABLE OF CONTENTS

TABLE OF CONTENTS.....2

TABLE OF AUTHORITIES3

STATEMENT OF ISSUES PRESENTED FOR REVIEW4

ARGUMENT5

 1. The conditions precedent of Iowa Code § 20.32 were not
 satisfied5

 2. The plain and unambiguous language of Iowa Code § 20.32
 establishes that it only applies to transit employees8

 3. The City’s interpretation of section 20.32 is the most reasonable
 and best effectuates the legislature’s intent9

CONCLUSION..... 16

CERTIFICATE OF COMPLIANCE..... 18

CERTIFICATE OF FILING AND SERVICE 19

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Beier Glass Co. v. Brundige</i> , 329 N.W.2d 280 (Iowa 1983)	4, 12
<i>Brakke v. Iowa Dep't of Nat.</i> , 897 N.W.2d 522 (Iowa 2017)	4, 15
<i>Janson v. Fulton</i> , 162 N.W.2d 438 (Iowa 1968)	4, 6
<i>Marcus v. Young</i> , 538 N.W.2d 285 (Iowa 1995)	4, 9
<i>State v. Doe</i> , 903 N.W.2d 347 (Iowa 2017)	4, 8
<i>United Elec., Radio & Mach. Workers of Am. v. Iowa Pub. Emp. Rels. Bd.</i> , 928 N.W.2d 101 (Iowa 2019)	4, 6, 7
<i>United States v. Turkette</i> , 452 U.S. 576, 101 S.Ct. 2524, 69 L.Ed.2d 246 (1981).....	4, 15
 Statutes	
Iowa Code § 20.27	4, 15, 16
Iowa Code § 20.32	Passim
Iowa Code § 20.9(1)	Passim
 Rules	
Iowa R. App. P. 6.903(1)(e).....	18
Iowa R. App. P. 6.903(1)(f).....	18
Iowa R. App. P. 6.903(1)(g)(1).....	18
 Other Authorities	
82 C.J.S. Statutes § 416	15
HF 291	4, 6, 7

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

- 1. Whether the conditions precedent of Iowa Code § 20.32 were not satisfied.**

Iowa Code § 20.32

Janson v. Fulton, 162 N.W.2d 438, 442 (Iowa 1968)

HF 291

United Elec., Radio & Mach. Workers of Am. v. Iowa Pub. Emp. Rels. Bd.,
928 N.W.2d 101, 117 (Iowa 2019)

- 2. Whether the plain and unambiguous language of Iowa Code § 20.32 establishes that it only applies to transit employees.**

State v. Doe, 903 N.W.2d 347, 351 (Iowa 2017)

Iowa Code § 20.32

Marcus v. Young, 538 N.W.2d 285, 289 (Iowa 1995)

- 3. Whether the City's interpretation of section 20.32 is the most reasonable and best effectuates the legislature's intent.**

Iowa Code § 20.32

Iowa Code § 20.9(1)

Beier Glass Co. v. Brundige, 329 N.W.2d 280, 283 (Iowa 1983)

United States v. Turkette, 452 U.S. 576, 583 n.5, 101 S.Ct. 2524, 69 L.Ed.2d
246 (1981)

82 C.J.S. Statutes § 416

Brakke v. Iowa Dep't of Nat. Res., 897 N.W.2d 522, 540 (Iowa 2017)

Iowa Code § 20.27

ARGUMENT

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

IUOE argues that the conditions precedent of Iowa Code section 20.32 were met in this case because the written confirmation requirement of section 20.32 only requires “notice that receipt of federal funds is jeopardized” and does not require that any expanded rights afforded by section 20.32 “will necessarily cure the loss of federal funding.” IUOE’s Brief at 60. IUOE’s interpretation is untenable. The determination that federal funds are jeopardized is not alone sufficient to trigger the statute. Rather, the required determination is that federal funds will be lost “if the transit employee is not covered under certain collective bargaining rights.” Iowa Code § 20.32 (emphasis added). The phrase “certain collective bargaining rights” necessarily refers to the expanded public safety bargaining rights potentially available to transit employees pursuant to section 20.32. In other words, the director of the department of transportation must determine that federal funding will be lost unless some or all of the public safety bargaining rights are provided to the transit employee. If the public employer would lose federal funds regardless of whether expanded public safety bargaining rights are provided to transit employees, then logically the director cannot make a determination that federal funds will be lost if those rights are not provided.

That is precisely the situation here. The Department of Labor determined that application of public safety bargaining rights to transit employees would itself result in the City losing federal funds because those rights were less than previously available to transit employees. App. 252-253. Thus, the director of the department of transportation could not make a determination that federal funds would be lost if the transit employee did not receive the expanded public safety bargaining rights. App. 250-251. Accordingly, the conditions precedent of Iowa Code section 20.32 were not satisfied.

Moreover, IUOE's interpretation would lead to an absurd result. "The construction of any statute must be reasonable and must be sensibly and fairly made with a view of carrying out the obvious intention of the legislature enacting it. It is a familiar, fundamental rule of statutory construction that, if fairly possible, a construction resulting in unreasonableness as well as absurd consequences will be avoided." *Janson v. Fulton*, 162 N.W.2d 438, 442 (Iowa 1968). Under IUOE's interpretation, the expanded public safety bargaining rights would be afforded to transit employees pursuant to section 20.32 even if providing those rights would not preserve federal funding. This construction makes little sense and is contrary to the overall intent of HF 291 which was to restrict—not expand—collective bargaining rights. *United*

Elec., Radio & Mach. Workers of Am. v. Iowa Pub. Emp. Rels. Bd., 928 N.W.2d 101, 117 (Iowa 2019). Providing expanded bargaining rights to transit employees when doing so will not preserve federal funds is contrary to that intent. The Court should reject such an interpretation.

Finally, the City is not trying “to have it both ways” as IUOE argues. IUOE’s Brief at 62. According to IUOE, “the City should not be permitted to assert that section 20.32 does not apply because the Iowa Director of Transportation cannot certify that receipt of federal funds are jeopardized, but at the same time, argue that section 20.27 applies because receipt of federal funds is jeopardized...” IUOE’s Brief at 62. However, the City is not taking inconsistent positions. The City agrees that HF 291 jeopardizes federal transit funds, thereby implicating section 20.27. However, for section 20.32 to apply, the director of the department of transportation must determine that federal funds will be jeopardized *if* public safety bargaining rights are not afforded to the transit employees. Iowa Code § 20.32. That latter requirement was not met because the Department of Labor determined that providing public safety bargaining rights to transit employees would not preserve federal funding. App. 252-253. Accordingly, while the prerequisites for section 20.27 were met, the prerequisites for section 20.32 were not. This is not the City trying

“to have it both ways”; rather, it is the City giving effect to the different language of the two sections.

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

Both PERB and IUOE argue that section 20.32 is ambiguous because it is unclear what substantive bargaining rights are granted by section 20.32. PERB’s Brief at 30-31; IUOE Brief at 46-50. However, the determinative issue in this appeal is *who* receives rights pursuant to section 20.32 rather than *what* rights are received. In interpreting a statute, the Court considers “the plain meaning of the *relevant* language, read in the context of the entire statute, to determine whether there is ambiguity.” *State v. Doe*, 903 N.W.2d 347, 351 (Iowa 2017) (emphasis added). The relevant language here is unambiguous. Section 20.32 plainly states that any additional rights provided by section 20.32 apply “to any transit employee.” Iowa Code § 20.32. The statute does not state that the additional rights apply to non-transit employees or to employees in bargaining units comprised of at least thirty percent transit employees. As succinctly stated by IUOE in summarizing the City’s argument, “the use of the term ‘transit employees’ in section 20.32 means to the exclusion of all other types of employees.” IUOE’s Brief at 46-47. While IUOE suggests that this an incorrect interpretation, it is consistent with Iowa law. It is well recognized that the express mention of one thing in a statute

implies the exclusion of others not so mentioned. *Marcus v. Young*, 538 N.W.2d 285, 289 (Iowa 1995). If the legislature had intended to afford additional rights to non-transit employees or to all members of a bargaining unit containing at least 30% transit employees, it would have expressly included them in the statute. Thus, whatever substantive bargaining rights are afforded by section 20.32, they are afforded only to transit employees, not non-transit employees. The analysis should end there. Accordingly, PERB and the district court erred in granting non-transit employees additional rights pursuant to section 20.32.

3. The City's interpretation of section 20.32 is the most reasonable and best effectuates the legislature's intent.

Even if the statute is considered ambiguous, the City's interpretation is correct. PERB and IUOE argue that the City's interpretation of section 20.32 is flawed because section 20.32 does not give transit employees expanded bargaining rights. Rather, section 20.32 states that all provisions of chapter 20 applicable to public safety employees shall be applicable to transit employees on the same terms and to the same degree. According to PERB and IUOE, this places transit employees in the same position as public safety employees and, therefore, under section 20.9(1) transit and non-transit employees are entitled to expanded public safety bargaining rights if the bargaining unit is composed of at least 30% transit employees. IUOE's Brief

at 47-48, 53; PERB’s Brief at 34. “The net effect being that the substantive bargaining rights of non-transit employees in the bargaining unit are determined by the same thirty percent threshold applied to a bargaining unit containing public safety employees.” IUOE’s Brief at 48.

The City recognizes that there is an incongruency in the statute. Section 20.32 purports to apply to transit employees those provisions in chapter 20 “applicable to *employees* describe in section 20.3, subsection 11” (i.e., public safety employees). Iowa Code § 20.32 (emphasis added). However, under section 20.91(1), the substantive provisions of chapter 20 are applied on a *bargaining unit* basis. Iowa Code § 20.9(1). PERB and IUOE address this incongruency by simply replacing the term “public safety employees” in section 20.9(1) with the term “transit employees”:

For negotiations regarding a bargaining unit with at least thirty percent of members who are [transit employees], the public employer and the employee organization shall meet at reasonable times ... 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, grievance procedures for resolving any questions arising under the agreement, and other matters mutually agreed upon. For negotiations regarding a bargaining unit that does not have at least thirty percent of members who are [transit employees], the public employer and the employee organization shall meet at reasonable times ... to negotiate in good faith with respect to base wages and other matters mutually agreed upon....

Iowa Code § 20.9(1).

Under PERB and IUOE's interpretation, transit employees only receive expanded bargaining rights if they are in a bargaining unit with at least thirty percent transit employees. This means that transit employees in a bargaining unit with less than thirty percent transit employees do not receive expanded public safety bargaining rights even if necessary to preserve federal funds. The legislature could not have intended such a result. The clear intent of section 20.32 is to give transit employees expanded bargaining rights when necessary to preserve federal funds. Interpreting section 20.32 in a manner that would deny expanded rights to some transit employees based on the composition of the bargaining unit would be contrary to that intent and would itself jeopardize federal funds. Moreover, section 20.32 states that the provisions applicable to public safety employees apply "to any transit employee." Iowa Code § 20.32. PERB and IUOE's interpretation would not apply those provisions "to any transit employee" but would instead only apply those provisions to transit employees in bargaining units with at least thirty percent transit employees.

The better interpretation is that when section 20.32 states that all provisions applicable to public safety *employees* apply to transit employees, the legislature meant that all provisions applicable to public safety *bargaining*

units apply to transit employees. In interpreting a statute, the Court should place on the statute a reasonable interpretation “which will best effect, rather than defeat, the legislature’s purpose.” *Beier Glass Co. v. Brundige*, 329 N.W.2d 280, 283 (Iowa 1983). Thus, “[t]he spirit of the statute must be considered along with its words, and the manifest intent of the legislature will prevail over the literal import of the words used.” *Id.* (internal citations omitted). Here, the City’s interpretation is best because it is consistent with the clear intent of section 20.32 and avoids the situation discussed above where some transit employees would not receive expanded rights merely because their bargaining unit contains less than thirty percent transit employees, thereby jeopardizing federal funds.

However, even if PERB and IUOE are correct that section 20.32 makes the thirty percent threshold of section 20.9(1) applicable to transit employees, there is still a major flaw in their logic. As discussed previously, section 20.32 makes the provisions of chapter 20 that apply to public safety employees “applicable on the same terms and to the same degree *to any transit employee....*” Iowa Code § 20.32 (emphasis added). Thus, at best, section 20.32 renders section 20.9(1) applicable to *transit employees* and gives *transit employees* expanded public safety bargaining rights if the bargaining unit is at least thirty percent transit employees. However, section 20.32 says nothing

about making section 20.9(1) applicable to non-transit employees. There is simply no statutory basis for applying section 20.32 to give non-transit employees additional rights pursuant to section 20.9(1) that they otherwise would not be entitled to.

PERB argues that the City's construction of section 20.32 means that "regardless of unit composition, non-transit employees would always have lesser bargaining rights of a non-public safety unit." PERB's Brief at 36. That is simply not true. Non-transit employees in a bargaining unit with at least thirty percent public safety employees would receive expanded bargaining rights just like any other public sector employee. *See* Iowa Code § 20.9(1). PERB also argues that the City's interpretation "essentially creates a new set of bargaining rights in addition to what the legislature created in 2017" and "there is nothing in the amended chapter 20 that suggests the legislature intended to create more than the two sets of bargaining rights for all public employees...." PERB's Brief at 34, 36-37. However, it is PERB's interpretation that creates a new set of bargaining rights, not the City's. PERB's interpretation creates a new transit/non-transit bargaining unit which is not something the legislature intended. The legislature intended to give transit *employees* expanded bargaining rights if necessary to preserve federal funds. *See* Iowa Code § 20.32. There is nothing in the statute suggesting that

the legislature intended to create a new transit/non-transit bargaining unit based on the thirty percent threshold.

Similarly, IUOE argues that the City's position in this case "has rested upon a false premise ... that ... when the legislature amended chapter 20 in 2017, the legislature intended to convey bargaining rights upon public employees based upon the type of work performed by a particular public employee in the bargaining unit rather than on a bargaining unit wide basis." IUOE's Brief at 14, 26. The City has never argued this position. The City acknowledges that for the majority of public employees, bargaining rights are determined by the composition of the bargaining unit as set forth in section 20.9(1). However, for transit employees, the legislature specifically singled them out due to federal protections unique to those employees. Section 20.32 expressly states that it applies to "any transit employee," not any employee in a bargaining unit comprised of at least thirty percent transit employees. Iowa Code § 20.32.

Finally, both PERB and IUOE argue that the City's interpretation renders section 20.32 meaningless and "the legislature did not enact section 20.32 so that it would never apply." IUOE's Brief at 58; PERB's Brief at 37. The City agrees that the legislature did not enact section 20.32 so it would never apply. At the time the legislature adopted section 20.32, the legislature

could not know whether providing expanded public safety rights to transit employees would be sufficient to preserve federal funding. If it had been sufficient, then section 20.32 would have been fully effective. However, the Department of Labor determined that providing public safety bargaining rights to transit employees would not be sufficient to preserve federal funds. App. 252-253. “Language in a statute is not rendered superfluous merely because in some contexts that language may not be pertinent.” *United States v. Turkette*, 452 U.S. 576, 583 n.5, 101 S.Ct. 2524, 69 L.Ed.2d 246 (1981). While section 20.32 is overlapping with section 20.27, “[t]here are times when redundancies are precisely what the legislature intended. Redundancy is not the same as surplusage for purposes of statutory interpretation. There is no rule of construction that precludes redundancy in a statute.” 82 C.J.S. Statutes § 416. Moreover, the legislative process often results in “half measures.” *Brakke v. Iowa Dep't of Nat. Res.*, 897 N.W.2d 522, 540 (Iowa 2017). Here, the legislature enacted a half measure in section 20.32, providing that if application of public safety employee bargaining rights to transit employees would be sufficient to preserve federal funds, then transit employees would be entitled to public safety bargaining rights. However, if providing such rights was not sufficient to preserve federal funds, there was a backstop in section 20.27 providing that if *any* provision of chapter 20

jeopardized the receipt of federal funds, it would be deemed inoperative. Iowa Code § 20.27. The Department of Labor determined that application of public safety bargaining rights to transit employees would not be sufficient to preserve federal funds. App. 252-253. Accordingly, section 20.32 was inoperative, not surplusage, and section 20.27 applied instead.

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,

/s/ Jason M. Craig

Jason M. Craig (AT0001707)

Aaron J. Hilligas (AT0013205)

AHLERS & COONEY, P.C.

100 Court Avenue, Suite 600

Des Moines, Iowa 50309-2231

Telephone: (515) 243-7611

Facsimile: (515) 243-2149

jcraig@ahlerslaw.com

ahilligas@ahlerslaw.com

ATTORNEYS FOR APPELLANT

CITY OF AMES

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 2,740 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.

/s/ Jason M. Craig

Jason M. Craig (AT0001707)

Aaron J. Hilligas (AT0013205)

AHLERS & COONEY, P.C.

100 Court Avenue, Suite 600

Des Moines, Iowa 50309-2231

Telephone: (515) 243-7611

Facsimile: (515) 243-2149

jcraig@ahlerslaw.com

ahilligas@ahlerslaw.com

ATTORNEYS FOR APPELLANT

CITY OF AMES

CERTIFICATE OF FILING AND SERVICE

I certify that on August 23, 2022, the foregoing Final Reply 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.

/s/ Jason M. Craig

Jason M. Craig (AT0001707)

Aaron J. Hilligas (AT0013205)

AHLERS & COONEY, P.C.

100 Court Avenue, Suite 600

Des Moines, Iowa 50309-2231

Telephone: (515) 243-7611

Facsimile: (515) 243-2149

jcraig@ahlerslaw.com

ahilligas@ahlerslaw.com

ATTORNEYS FOR APPELLANT

CITY OF AMES

02093392-1\17407-015