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IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 22-0468
Polk County No. CVCV0061533

CITY OF AMES,
Petitioner-Appellant,

v.

IOWA PUBLIC EMPLOYMENT RELATIONS BOARD,
Respondent-Appellee.

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

FINAL BRIEF
IOWA PUBLIC EMPLOYMENT RELATIONS BOARD

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ROUTING STATEMENT

This case should be retained by the Supreme Court. The case raises the substantial issue of interpretation for determining the Iowa Code chapter 20 substantive bargaining rights for a bargaining unit of non-transit and transit employees after the enactment and effective date of 2017 Iowa Acts, House File 291, which amended Iowa Code chapter 20. *See* Iowa R. App. P. 6.1101(2)(*f*). The case presents the substantial issue of interpretation of the new Iowa Code section 20.32, "Transit employees – applicability," and is one of first impression. *See* Iowa R. App. P. 6110(2)(*c*).

STATEMENT OF THE CASE

The Public Employment Relations Board (PERB or Board) is satisfied with Ames's Statement of the Case with the exception of the district court's conclusion,

> PERB correctly engaged in the proper analysis for determining the substantive collective bargaining rights of a bargaining unit that includes both the transit and non-transit employees while at the same time interpreting and applying [c]hapter 20 in a manner that was not erroneous, irrational, illogical, nor constituted a wholly unjustifiable application of

> law to fact, or was unreasonable, arbitrary, capricious, or an abuse of discretion.

App. 387-388.

STATEMENT OF THE FACTS

PERB is satisfied with Ames' Statement of Facts with the following clarifications:

The parties dispute whether the director of the Iowa Department of Transportation (IDOT) made the Iowa Code section 20.32 determination that Ames would lose federal funding. (*See* Ames Proof Brief at 16, 20-21). International Union of Operating Engineers, Local 234 (IUOE) and AFSCME Iowa Council 61 contend the IDOT director made this determination. PERB submits that one can construe the IDOT director's affidavit as fulfilling or making the determination required by section 20.32. (App. 250-251).

Iowa Code section 20.32 requires the determination upon "written confirmation from the United States department of labor, that a public employer would lose federal funding." As contemplated by section 20.32, the United States Department of Labor (DOL) provided written confirmation by its June 7,

2017, letter to the IDOT and union representatives. (App. 252-253).

The new section 20.32 added by House File 291 is not so similar to pre-existing section 20.27 as stated by Ames. (*See* Ames Proof Brief at 13). First, they differ in their context and bargaining landscape. Section 20.27 was an existing part of chapter 20 when all bargaining units had the same bargaining rights. In contrast, section 20.32 was added when the legislature established two sets of bargaining rights based on public safety employee unit composition.

Second, while both sections address the preservation of federal funding, their mechanisms in application differ in achieving that result. Section 20.27 deems chapter 20 provisions inoperative only to the extent necessary to achieve the preservation of funds. New section 20.32 differs; when the employer's receipt of federal transit funding is jeopardized, section 20.32 equates transit employees to public safety employees "on the same terms and to the same degree" for all chapter 20 provisions. The effect of which subjects the transit

employees to the public safety unit-composition threshold for the determination of substantive bargaining rights.

Ames, IUOE, and AFSCME do not dispute that Ames was in jeopardy of losing federal transit funding. Ames sets forth the DOL's indication that the new retention and recertification election for all units of public employees does not meet 49 U.S.C. § 5333(b)(2)(A) requirements. Therefore, in all instances, the public employer would lose federal transit funding for any one Iowa public transit employee under amended chapter 20 and regardless of unit composition.

ARGUMENT

PERB DID NOT ERR IN ITS INTERPRETATION OF SECTION 20.32 AND DETERMINING THE MIXED UNIT OF TRANSIT AND NON-TRANSIT EMPLOYEES IS ENTITLED TO GREATER BARGAINING RIGHTS BASED ON THE UNIT'S COMPOSITION OF THIRTY PERCENT OR MORE TRANSIT EMPLOYEES.

Introduction.

The district court stated as the underpinning issue,

> [W]hat are the substantive collective bargaining rights for a public sector bargaining unit in Iowa that includes both public sector transit employees and non-transit employees in the same bargaining unit when the public employer's receipt of federal funding is jeopardized.

App. 386.

The question is one of first impression following the 2017 amendments to chapter 20 and their application to mixed units of transit and non-transit employees. The amendments created two sets of substantive bargaining rights for public employees. One is essentially restricted to the mandatorily negotiable subject of "base wages" and the other retains most of the former mandatorily negotiable subjects and other substantive bargaining rights. These chapter 20 rights are determined for the unit as a whole based on the unit's composition of "public safety" employees. Units comprised of thirty percent or more "public safety" employees are entitled to the set of greater bargaining rights.

The legislature also added new section 20.32, which equates transit employees to public safety employees when the employer's receipt of federal funding is jeopardized. Arguably, section 20.32 is an extension of the procedural mechanism for determining substantive bargaining rights by unit composition.

In this case, it is not enough to simply address the transit employees and assert new section 20.32 has an impossible triggering mechanism, does not preserve federal funding, and does not specifically mention the non-transit employees of the unit. Section 20.32 does not exist in a vacuum. Nor do the transit employees. Ames' interpretation ignores the legislative purpose of establishing a composition threshold to determine the entire unit's bargaining rights. Further, this interpretation renders section 20.32 meaningless—effectively, the non-transit employees are not entitled to greater bargaining rights based on unit composition like the "non-public safety employees" who are also not mentioned anywhere in chapter 20.

In contrast, the correct analysis requires taking a step back and employing a systematic analysis, which gives effect to all statutory provisions. This analysis requires the application of section 20.32 to determine the mixed transit-unit's bargaining rights based on unit composition of transit employees. Thereafter, any chapter 20 provision deemed inoperative by section 20.27 does not affect or impact this

threshold requirement and the unit's non-transit employees' bargaining rights.

PERB employed this approach and its interpretation gives effect to bargaining rights extended on a unit basis and based on the composition threshold while narrowly deeming inoperative those chapter 20 provisions that jeopardize federal funding with respect to the transit employees.

Issue Preservation.

Although PERB views the issues in somewhat different terms than Ames, it agrees that the issue of interpretation, for determining the Iowa Code chapter 20 substantive bargaining rights for a bargaining unit of transit and non-transit employees, has been preserved for appellate review.

Scope and Standard of Review.

PERB agrees with Ames' stated scope and standard of review pursuant to Iowa Code § 17A.19(10)(*c*).

Iowa Code section 17A.19(10) governs judicial review of agency decisions. *Burton v. Hilltop Care Ctr.*, 813 N.W.2d 250, 255 (Iowa 2012). The court may grant relief if the agency action has prejudiced the substantial rights of the petitioner and the

agency action meets one of the enumerated criteria contained in section 17A.19(10)(*a*) through (*n*). *Id.* at 256. The party asserting that the agency action is invalid, in this case Ames, bears the burden of demonstrating the required prejudice and invalidity. *See* Iowa Code § 17A.19(8)(*a*).

Here, the agency action under review is PERB's declaratory order on the Iowa Code chapter 20 substantive bargaining rights of a mixed bargaining unit of transit and non-transit employees. The issue is PERB's interpretation of Iowa Code section 20.32 and other chapter 20 provisions in reaching its conclusion.

PERB no longer has explicit authority to interpret Iowa Code chapter 20. Such interpretation has not "clearly been vested by a provision of law in the discretion of the agency." *See* Iowa Code § 17A.19(10)(*c*). Thus, the Court reviews whether PERB's decision was "[b]ased on an erroneous interpretation of a provision of law." *See* Iowa Code § 17A.19(10)(*c*).

A. Pursuant to chapter 20, public employees' bargaining rights are extended on a unit basis and limited to one of two sets of bargaining rights based on a thirty percent composition threshold.

Before addressing bargaining rights when the public employer's receipt of federal funds is jeopardized, it is helpful to understand the substantive bargaining rights that exist for all public employees, the history of those rights, and changes that were made by 2017 amendments to chapter 20. These amendments drastically changed comprehensive bargaining rights for public employees, but retained much of the rights for the special class of "public safety employee(s)" if their unit composition reaches the thirty percent threshold.

1. State law, Iowa Code chapter 20, determines the substantive bargaining rights of public employees even when the public employer receives federal funds.

As an initial premise in its decision, PERB noted that the bargaining rights of the mixed unit are determined in accordance to state law, Iowa Code chapter 20. The parties' 13(c) Agreement and the DOL do not determine state collective bargaining rights nor the application of Iowa Code section 20.32 to determine those rights. *See* App. 310-311.

In the interpretation of 13(c) Agreements, the federal courts have been clear that state law governs the collective bargaining between the local government employers and the

unions representing transit employees. *See Amalgamated Transit Union Int'l, AFL-CIO v. Donovan*, 767 F.2d 939, 944 (D.C. Cir. 1985). Congress did not intend to create a body of federal law, Section 13(c) of the Mass Transportation Act of 1964, to supersede state labor relations law. *See Jackson Transit Auth. V. Local Div. 1285, Amalgamated*, 457 U.S. 15, 27 (1982). The federal law only sets the standards for the public employer to receive the funds; the states are free to forego such federal assistance and thus adopt any collective bargaining scheme they desire. *See Amalgamated Transit Union Int'l*, 767 F.2d at 948.

Accordingly, Iowa Code chapter 20 determines the collective bargaining rights of union-represented transit and non-transit employees. The parties' 13(c) Agreement, 49 U.S.C. § 5333 (or section 5333 federal requirements), the DOL, and the DOL certification process only affect the public employer transit systems' receipt of related federal funding.

2. Pursuant to chapter 20, there are now two sets of substantive bargaining rights extended on a unit basis and determined by the unit's composition of thirty percent or more of public safety employees.

Prior to the 2017 amendments, Iowa Code chapter 20 extended bargaining rights on a unit basis and irrespective of the unit employees' employment status, *i.e.*, public safety employee status. All units were entitled to bargain eighteen mandatory subjects of bargaining with the same arbitration procedures and other substantive rights addressed in chapter 20. *See* Iowa Code chapter 20 (2017).

With the amendments, the legislature established two sets of substantive bargaining rights determined by or based on a unit's composition of thirty percent or more of "public safety employees." *See* Iowa Code § 20.3(11) (setting out the meaning of "public safety employee" by qualifying listed professions). Now, although not in chapter 20, PERB references units as "public-safety" or "non-public safety" units based on their composition makeup of public safety employees. Chapter 20 does not make this reference nor is there reference to "non-public safety" employees.

For public safety units, the chapter 20 substantive rights remained virtually unchanged in many respects. In contrast, the legislature eliminated all former mandatorily negotiable

subjects and replaced them with one subject, "base wages," for non-public safety units, restricted their arbitration procedures, and limited arbitration awards.

The amendments evince the legislature's intent to grant greater rights to public safety employees. However, to avoid the practical problems with inter-unit collective bargaining, the legislature maintained the extension of bargaining rights on a unit basis rather than by an individual public safety employee status. *See AFSCME Iowa Council 61 v. State*, 928 N.W.2d 21, 39 (Iowa 2019).

To implement the procedure whereby substantive bargaining rights are determined by unit composition, PERB adopted a new administrative rule, which provides in relevant part:

> **621—6.4(20) Public safety unit determination**.
> **6.4(1)** *Applicability.* This rule applies only to bargaining units which include at least one public safety employee, as defined in 621—subrule 1.6(12) or as required by Iowa Code section 20.32 concerning certain transit employees.
> **6.4(2)** *Defined.* …
> **6.4(3)** *Determination of public safety unit status.* …
> **6.4(4)** *Identification of public safety or non-public safety unit.* …
> **6.4(5)** *Agreement and stipulation.* …

> **6.4(6)** *Petition, response and hearing for determination of public safety or non-public safety unit status. …*
> **6.4(7)** *Deadlines. …*

Iowa Admin. Code r. 621—6.4(2) (Emphasis added). PERB recognized the distinct difference in substantive bargaining rights for the two sets of units and even provided for a hearing in the event the parties did not agree to the unit's composition and public safety status. *See id.*

Thus, the proper analysis of public employee bargaining rights require a determination of the unit's public safety employee composition. PERB rule 621—6.4(20) provides guidance in this regard. Bargaining rights for a public safety unit extend to those units meeting the threshold of thirty percent or more and the diminished set of bargaining rights extend to the non-public safety units. This threshold determination is the result of the legislature's balance of interests to restrict bargaining rights for public employees, but with greater rights to public-safety employees, and the establishment of rights on a unit basis.

B. To determine a mixed transit unit's substantive collective bargaining rights, the proper analysis requires examination of section 20.32 and the entirety of chapter 20.

1. A determination of bargaining rights begins with the specific provision on point, section 20.32.

In addition to looking to the two sets of bargaining rights now in existence, new section 20.32 must be examined when an employer's receipt of federal funds is jeopardized with respect to transit employees. Although the legislature extended greater bargaining rights in its 2017 chapter 20 amendments to "public safety employees" on a unit basis, it also specifically addressed transit employees and added new section 20.32, which provides:

> **20.32 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 (2019).

PERB's interpretation of section 20.32 is reflected in PERB rule 621—6.4(20), "Public safety unit determination" and the inclusion of transit employees as required by section 20.32. PERB recognized section 20.32 equated transit employees to public safety employees and required the calculation of public safety and non-public safety unit status based on the unit composition of transit employees.

Thus, section 20.32 is examined to determine bargaining rights for transit employees if an employer would lose federal funding under 49 U.S.C. § 5333(b). Relevant too is PERB rule 621—6.4(20).

2. A proper analysis requires a determination whether section 20.32 is clear in meaning and can be applied to the facts at hand or if the section is ambiguous.

As a first step, it is necessary to determine whether section 20.32 is ambiguous where reasonable persons could disagree upon its meaning. If ambiguous, the analysis requires resort to rules of statutory construction to ascertain its meaning. This determination requires adherence to the courts' guiding principles. When interpreting a statute, the goal is to determine legislative intent. *Auen v. Alcoholic Beverages Div.,* 679 N.W.2d

586, 590 (Iowa 2004). To determine legislative intent, the courts look to the language chosen by the legislature and not what the legislature might have said. *Schadendorf v. Snap–On Tools Corp.,* 757 N.W.2d 330, 337 (Iowa 2008). Absent a statutory definition, the courts consider statutory terms in the context in which they appear and give each its ordinary and common meaning. *Rojas v. Pine Ridge Farms, L.L.C.,* 779 N.W.2d 223, 235 (Iowa 2010).

Before resorting to rules of statutory construction, we determine whether the language chosen by the legislature is ambiguous. *Zimmer v. Vander Waal,* 780 N.W.2d 730, 733 (Iowa 2010). A statute is not plain or clear "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). A statute is ambiguous if reasonable persons can disagree on its meaning. *State v. Wiederien,* 709 N.W.2d 538, 541 (Iowa 2006). Ambiguity may arise regarding the meaning of particular words or the general scope and meaning of a statute. *Holiday Inns Franchising, Inc. v. Branstad,* 537 N.W.2d 724, 728 (Iowa 1995).

The courts had previously determined "when a literal interpretation of a statute results in absurd consequences that undermine the clear purpose of the statute, an ambiguity arises." *Hutchinson v. Shull*, 878 N.W.2d 221, 231 (Iowa 2016) (quoting *Sherwin–Williams Co. v. Iowa Dep't of Revenue,* 789 N.W.2d 417, 427 n. 8 (Iowa 2010)). The *Sherwin Williams* Court indicated in its analysis,

> '[w]here the language is of doubtful meaning, *or where an adherence to the strict letter would lead ... to absurdity*, or to contradictory provisions, the duty of ascertaining the true meaning devolves upon the court.' *Case v. Olson,* 234 Iowa 869, 872, 14 N.W.2d 717, 719 (1944) (emphasis added); *accord Sutherland Statutory Construction* § 45:12, at 101 ('It is fundamental, however, that departure from the literal construction of a statute is justified when such a construction would produce an absurd and unjust result and would clearly be inconsistent with the purposes and policies of the act in question.'). Nonetheless, we are mindful of the cautionary advice of one commentator that 'the absurd results doctrine should be used sparingly because it entails the risk that the judiciary will displace legislative policy on the basis of speculation that the legislature could not have meant what it unmistakably said.' *Sutherland Statutory Construction* § 45:12, at 105–07.

Id. at 427. Subsequently, the Court distinguished between interpreting ambiguous statutes to avoid absurd results and

declining to enforce the literal terms of a statute to avoid absurdity. *See Braake v. Dep't of Nat. Res.*, 897 N.W.2d 522, 534 (Iowa 2017).

Following the above guiding principles, it is necessary to determine whether section 20.32 is clear in meaning or if in fact it is ambiguous. If section 20.32 is clear and unambiguous, it can then be applied to determine the mixed unit's bargaining rights.

3. If it is determined that section 20.32 is ambiguous then rules of statutory construction are employed to effectuate the statute's purpose.

If in fact an ambiguity exists,"[t]o resolve ambiguity and ultimately determine legislative intent [the court] consider[s] (1) the language of the statute; (2) the objects sought to be accomplished; (3) the evils sought to be remedied; and (4) a reasonable construction that will effectuate the statute's purpose rather than one that will defeat it." *IBP, Inc. v. Harker*, 633 N.W.2d 322, 325 (Iowa 2001) (quoting *Voss v. Iowa Dep't of Transp.*, 621 N.W.2d 208, 211 (Iowa 2001) (further citation omitted). "[A] statute should be accorded a logical, sensible construction which gives harmonious

meaning to related sections and accomplishes the legislative purpose." *Id.* (quoting *McSpadden v. Big Ben Coal Co.*, 288 N.W.2d 181, 188 (Iowa 1980)).

If a statute is ambiguous, the courts consider, among other matters, "[t]he object sought to be obtained," "[t]he circumstances under which the statute was enacted," "[t]he legislative history," "[t]he common law or former statutory provisions," "[t]he consequences of a particular construction," "[t]he administrative construction of the statute," and "[t]he preamble or statement of policy." *Salle v. Stewart*, 827 N.W.2d 128, 148 (Iowa 2013) (quoting Iowa Code § 4.6).

If section 20.32 is ambiguous, we follow these rules of construction and principles set forth by statute and the courts. Our ultimate goal is to effectuate legislative intent and the statute's purpose.

4. If necessary, section 20.27 may apply to preserve the employer's receipt of federal funding.

Whenever federal funds are at issue, it may be necessary to look at section 20.27. Pursuant to this section, PERB may deem chapter 20 provisions inoperative to the extent the

provisions jeopardize the employer's receipt of federal funding. This is a general statute that was in existence before the 2017 amendments.

C. In this case, application of the proper analysis results in the application of section 20.32 to calculate the unit's composition and bargaining rights in a manner equivalent to mixed units of public safety and non-public safety employees while certain chapter 20 portions are deemed inoperative for compliance with DOL requirements and to preserve federal funding for the unit's transit employees.

1. PERB correctly analyzed section 20.32 and determined it is ambiguous.

The determination of bargaining rights for a mixed unit of transit employees is a question of first impression and is one that follows a major overhaul of Iowa Code chapter 20 and all public employees' collective bargaining rights. The issue is further complicated because, as presented, PERB was asked to assess not only section 20.32, but analyze its application in conjunction with Iowa Code section 20.27.

Section 20.32 is the more specific statute and on point as to transit employees' bargaining rights when the employer's receipt of federal transit funds is jeopardized. The proper analysis requires examination of this section first before

considering whether its application meets DOL federal requirements and whether the application of section 20.27 is appropriate.

In analyzing section 20.32, PERB followed the principles set by the court as previously outlined herein. As the first step, it is appropriate to determine whether section 20.32 is ambiguous. "A statute is ambiguous if reasonable minds could differ or be uncertain as to the meaning of the statute." *Sherwin Williams Co.*, 789 N.W.2d at 424. Ambiguity may arise upon examination of all the statute's provisions in context. *Holstein Elec. V. Breyfogle*, 756 N.W.2d 812, 815 (Iowa 2008). "Even if the meaning of the words seem clear on their face, their context can create ambiguity." *Iowa Ins. Institute v. Core Group of Iowa Ass'n for Justice*, 867 N.W.2d 58, 72 (Iowa 2015).

Based on this guidance, Iowa Code section 20.32 is ambiguous. The section is ambiguous because it does not directly specify substantive bargaining rights for transit employees. Instead, it provides in part that "[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." (Emphasis added). It is unclear what this means without reviewing the totality of chapter 20 to identify provisions applicable to public safety employees and ascertain what the "same terms" and "to the same degree" require for transit employees.

Additionally, the section's requirement that the IDOT director make a determination upon written confirmation from the DOL that the public employer would lose federal funding under 49 U.S.C. § 5333(b) is cumbersome and ambiguous. The parties disagree on what constitutes a determination by the IDOT director and, if in fact, the director made the determination. The parties also disagree on what constitutes written confirmation by the DOL and, if in fact, the DOL provided this written confirmation.

Reasonable minds could differ or be uncertain as to the meaning of this new section 20.32. In this case, the City, IUOE, and AFSCME do in fact disagree on the meaning of section 20.32 and, as a result, Ames filed the petition for a declaratory order of guidance with PERB for the Board to resolve the issue.

Because section 20.32 is ambiguous, PERB correctly utilized rules of statutory construction to interpret the provision as intended by the legislature.

2. PERB correctly interpreted section 20.32 in a manner that effectuates legislative intent and the statute's objective of treating the unit the same as other mixed bargaining units comprised of public safety and non-public safety employees.

In its declaratory order, PERB correctly applied rules of statutory construction to construe section 20.32. One obvious object of section 20.32 is the preservation of federal funds tied to DOL requirements for transit employees. However, construction of section 20.32 includes "assessing the statute in its entirety rather than isolated words or phrases to ensure our interpretation is harmonious with the statute as a whole." *Schadendorf,* 757 N.W.2d at 337. Accordingly, one cannot read the section's language on the preservation of federal funding in isolation. The section's other provisions extending public safety treatment to transit employees on "the same terms and to the same degree" are equally important in construction. An examination of public safety employees' bargaining rights is instructive and requires a look at their origin.

An essential part of construction is the history of section 20.32 and its context within the greater scope of all substantive changes made to chapter 20. With the 2017 amendments, the legislature created two sets of bargaining rights – one with bare bones rights and the other which retained many of the former chapter 20 bargaining rights. In extending these rights to public employees, the legislature did not grant the greater rights to public safety employees on an individual basis. Nor did the legislature granted greater rights to transit employees on an individual basis.

Rather, the legislature extended bargaining rights on a unit-basis and based on the unit's thirty percent threshold of public safety employees. It is reasonably inferred that this threshold reflects the legislature's balancing of interests to restrict bargaining rights, but extend greater rights to public safety employees on a unit basis.

This context is important in construing section 20.32 because 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 or divide

existing units based on employment status, *i.e.*, public safety or transit, or extend different bargaining rights within a unit. It is even documented in the *AFSCME* case that the legislature wanted to avoid the headaches of inter-unit bargaining rights. *See AFCME Council 61*, 928 N.W.2d at 39.

Thus, PERB construed section 20.32 in a manner that is most consistent with these legislative interests. Against this backdrop, PERB reasonably determined the legislature intended to limit transit employees and their units in the same manner, *i.e.*, "same terms and to the same degree," as public safety employees and their units. While transit employees are entitled to greater bargaining rights like public safety employees, it logically follows that those rights are subject to the same parameters as public safety employees' bargaining rights: based on the unit composition threshold and extended on a unit basis.

Therefore, there are two legislative objectives inherent in section 20.32: the preservation of federal funds tied to 49 U.S.C. § 5333(b) requirements; and the determination of bargaining rights on the same basis and within the same parameters as

public safety employees. Although chapter 20 does not mention "non-public safety employees" and section 20.32 does not mention "non-transit employees," these public employees' collective bargaining rights are determined by their unit's composition of public safety employees or transit employees respectively.

Unfortunately, the DOL determined that the transit employees' treatment as public safety employees fails to meet federal requirements. This is undisputed by the parties. As a result, Ames contends section 20.32 cannot be construed in a manner that effectuates only one objective if it fails in application to meet the other objective of preserving federal funds.

Turning to the rules of construction, section 20.32 is construed in a manner that effectuates the objective of extending bargaining rights based on the unit's composition of transit employees. This objective is not rendered irrelevant even if section 20.32 fails to preserve federal funding. Because we presume the legislature included every part of the statute for a purpose, we avoid construing a statutory provision in a manner

that would make any portion thereof redundant or irrelevant. *Rojas*, 779 N.W.2d at 231.

In this case, the unit's non-transit employees would have bargaining rights extended to public safety units because the unit is comprised of thirty percent or more of transit employees. This would align non-transit employees with non-public safety employees who are in units with public safety employees. This construction of section 20.32 gives effect to the thirty percent threshold. If transit employees did not comprise thirty percent of the unit, the non-transit employees, like non-public safety employees, would have bargaining rights extended to non-public safety units.

PERB correctly considered the consequences of a contrary construction. *See Salle*, 827 N.W.2d at 148 (quoting Iowa Code § 4.6). Based on Ames' construction of section 20.32, regardless of unit composition, non-transit employees would always have lesser bargaining rights of a non-public safety unit. Essentially this creates a new set of bargaining rights in addition to what the legislature created in 2017. Further, their bargaining rights would always be substantially different than the rights afforded

their fellow unit transit employees even when there are a significant number of transit employees in the unit. Finally, Ames' interpretation deems section 20.32 meaningless and inapplicable in all instances.

For all these reasons, PERB construed section 20.32 in the correct manner and concluded the section applies to determine the substantive bargaining rights for the mixed unit of transit and non-transit employees. Regardless of its federal funding objective and related cumbersome requirement for IDOT documentation, this construction of section 20.32 puts mixed transit units on par with mixed public safety units as intended by the legislature. It limits the mixed transit unit to one of the two sets of bargaining rights established by the legislature rather than a third set where composition threshold is ignored and irrelevant.

PERB's decision was not "[b]ased on an erroneous interpretation" of section 20.32 or any other chapter 20 provision. *See* Iowa Code § 17A.19(10)(*c*).

3. To preserve federal funding, pursuant to section 20.27, PERB correctly deemed portions of chapter 20 inoperative for transit employees after their substantive bargaining rights are determined in accordance with section 20.32.

The parties do not dispute that amended chapter 20 provisions conflict with the requirements of 49 U.S.C. § 5333(b) for transit employees. Section 20.27 provides,

> **20.27 Conflict with federal aid.**
> If any provision of this chapter jeopardizes the receipt by the state or any of its political subdivisions of any federal grant-in-aid funds or other federal allotment of money, the provisions of this chapter shall, insofar as the fund is jeopardized, be deemed inoperative.

Iowa Code § 20.27 (2019).

This is a general statute and not a source of substantive rights. Accordingly, before section 20.27 applies, a determination must be made of the chapter 20 procedural or substantive provision that jeopardizes federal funding. Section 20.27 is narrowly tailored and applies only to the extent that those funds are jeopardized. For this reason, section 20.27 does not apply for the benefit and protection of the non-transit employees. For this same reason, too, section 20.27 does not

affect the application of section 20.32 to the non-transit employees.

For these reasons and based in part on the DOL's certification, PERB correctly deemed amended chapter 20 inoperative and chapter 20 in effect as of February 16, 2017, operative and applicable to the transit employees only. However, PERB also correctly determined that this application of section 20.27 does not affect the initial determination of bargaining rights for the remaining employees in the unit – non-transit employees.

CONCLUSION

This case is one of first impression as to the determination of bargaining rights for a mixed unit of transit and non-transit employees when the employer's receipt of federal transit funds is in jeopardy.

The legislature added new Iowa Code section 20.32 to address this situation and put these mixed transit units on equal footing with mixed units of public safety and non-public safety units. For the mixed units of public safety employees, the legislature established two sets of collective bargaining

rights extended on a unit, not individual basis. Which set of bargaining rights apply to the unit depends on the unit's composition of public safety employees. The legislature set a composition threshold of thirty percent with those units meeting or exceeding the threshold having the greater set of substantive collective bargaining rights.

Pursuant to section 20.32, this threshold composition applies to the mixed unit of transit and non-transit employees to determine their bargaining rights just like the mixed units of public safety and non-public safety employees. PERB reached this conclusion correctly by determining section 20.32 ambiguous and engaging the appropriate rules of statutory construction. As a result, PERB determined this mixed unit of transit and non-transit employees had the greater bargaining rights due to its unit composition of thirty percent or more of transit employees.

Because of the unique circumstances of federal transit funding for the unit's transit employees, PERB deemed certain chapter 20 provisions inoperative for the transit employees

pursuant to section 20.27. The result is they receive greater bargaining rights than any other public employees.

For all these reasons, PERB's declaratory order should be affirmed.

REQUEST FOR ORAL SUBMISSION

Appellee Public Employment Relations Board requests oral argument on the issues appealed in this case.

Respectfully submitted,

PUBLIC EMPLOYMENT RELATIONS BOARD

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Dated: 08/15/2022

/s/ Diana S. Machir
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CERTIFICATE OF FILING AND SERVICE

The undersigned hereby certifies that a true copy of the foregoing brief was served upon the attorneys of record for the parties by filing the same with the Iowa Electronic Document Management System (EDMS) on August 15, 2022. The following attorneys of record were served through the Iowa EDMS:

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