IN THE IOWA SUPREME COURT

SUPREME COURT NO. 22-0468
POLK COUNTY NO. CVCV61533

CITY OF AMES,
Petitioner-Appellant

vs.

IOWA PUBLIC EMPLOYMENT RELATIONS BOARD,
Respondent-Appellee

APPEAL FROM THE DISTRICT COURT FOR POLK COUNTY
HON. JUDGE SCOTT D. ROSENBERG

FINAL BRIEF OF INTERVENOR INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 234

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ROUTING STATEMENT

Intervenor, International Union of Operating Engineers, Local 234, urges this case should be retained by the Iowa Supreme Court to clarify as a matter of first impression what are the substantive collective bargaining rights for a public sector bargaining unit in Iowa that includes both public sector transit and non-transit employees in the same bargaining unit when the public employer's receipt of federal funding is jeopardized under Iowa Code Chapter 20. Iowa R. App. P. 6.1101(2)(c).

STATEMENT OF THE CASE

Intervenor, International Union of Operating Engineers, Local 230 (Union) agrees with the Petitioner-Appellant's (City) Statement of the Case with the following exception. The Union affirmatively states that the District Court's Order affirming the Iowa Public Employment Relations Board's (PERB) decision in this matter answered the following basic question:

> The Court agrees with the Union that the question underpinning all of the City's inquiries is "what 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). (internal citations omitted).

STATEMENT OF FACTS

The Union agrees with the City's Statement of Facts in this matter with the following exception. As will be argued fully below, the Union disagrees that the Director of the Iowa Department of Transportation has not made the determination contemplated by Iowa Code section 20.32 because the United States Department of Labor (Department of Labor) would not provide written confirmation that application of public safety bargaining rights to transit employees was necessary to preserve federal

funds. Similarly, the Union also urges, for the reasons set forth below, that the Department of Labor did provide such written confirmation.

ARGUMENT

I. THE DISTRICT COURT AND PERB DID NOT ERR IN APPLYING SECTION 20.32 TO A COLLECTIVE BARGAINING UNIT CONTAINING TRANSIT EMPLOYEES AND CONCLUDING THAT BARGAINING UNITS CONSISTING OF GREATER THAN THIRTY PERCENT TRANSIT EMPLOYEES ARE ENTITLED TO EXPANDED BARGAINING RIGHTS UNDER CHAPTER 20.

A. Preservation of Error

The Union agrees the City preserved error by arguing its positions to and obtaining rulings from PERB and the District Court.

B. Standard of Review

Iowa Code chapter 17A provides the grounds for review of judicial action. The Court shall give "appropriate deference to the view of the agency" if the agency has been vested with interpretative authority. Iowa Code § 17A.19(11)(c). If an agency is not vested with interpretative authority, the Court "[s]hall not give any deference to the view of the agency with respect to particular matters that have not been vested by a provision of law in the discretion of the agency." Iowa Code § 17A.19(11)(b). The 2017 amendments to Iowa Code section 20.6 took away PERB's interpretative 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). As a result, PERB's interpretation of chapter 20 is reviewed for correction of errors at law. *Id.*; Iowa Code § 17A.19(10)(c).

C. Summary of Argument

The basic question put forth in this case is what are the substantive collective bargaining rights for a public sector bargaining unit in Iowa that include 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 Union urges that the District Court and PERB correctly applied section 20.32 to the entire bargaining unit to determine the substantive bargaining rights for the entire bargaining unit, and then, deemed inoperative under section 20.27 the provisions of chapter 20, post HF 291 amendments, that jeopardized federal funding. The Union argues the City's contention that the application of section 20.32 to the entire bargaining unit, which necessarily includes non-transit employees, is not consistent with the proper application of chapter 20 post HF-291 amendments lacks merit.

Throughout the entirety of this litigation, the City's position has rested upon a false premise, and that is, 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. The Iowa Supreme Court recognized that the Legislature did not take the approach of conferring substantive bargaining rights on an individual basis, based upon the type of work performed by the public employee, in *AFSCME Iowa Council 61 v. State*, 928 N.W.2d 21 (Iowa 2019). The Union argues the Court should affirm its recognition of the legislature's intent in this case and reject the City's false premise.

As noted above, the dispute in this manner involves the application of section 20.32 to a bargaining unit containing both transit and non-transit employees. In its Brief, the City first contends that the condition precedent for the application of section 20.32 was not satisfied, and as a result, error resulted from the application of section 20.32. The City then contends that section 20.32 is unambiguous and applies only to transit employees. And, finally, the City asserts that even if section 20.32 is ambiguous, the application of section 20.32 by the District Court and PERB does not comport with rules of statutory construction.

The Union urges the problem with the City's apparent assertions is two-fold. First, the City's position, taken to its logical conclusion, renders section 20.32 meaningless, a result not intended by the legislature. Indeed, under the City's position, there is no circumstance when section 20.32 would apply. Second, the City's assertions ignore and disregard the entire legislative purpose behind establishing a threshold for determination of a bargaining unit's substantive collective bargaining rights.

The Union urges the problem with the City's position is resolved by the decisions of the District Court and PERB in this matter. In those decisions, the District Court and PERB correctly applied section 20.32 to the entire bargaining unit to determine the substantive collective bargaining rights enjoyed by members of the entire bargaining unit under section 20.9(1). Then, after the determination was made that receipt of federal funding was jeopardized and the determination of the substantive collective bargaining rights of the entire bargaining unit was made, the decisions narrowly deemed inoperative the offending provisions of chapter 20 that jeopardize the receipt of federal funding. As a result, the decisions give effect to the legislature's intent to preserve receipt of

federal funds, narrowly deeming inoperative the provisions of chapter 20 jeopardizing receipt of federal funds, and extending bargaining rights on a unit rather than individual basis.

To this end, contrary to the City's apparent position, the United States Department of Labor (Department of Labor) may determine that the substantive bargaining rights conferred upon the entire bargaining unit as a result of the application of section 20.32 and provided for in section 20.9(1) do not adequately protect the collective bargaining rights of transit employees in the bargaining unit, but such a determination does not affect the collective bargaining rights of the remaining employees in the bargaining unit, whose rights are dependent upon the total number of transit employees in the bargaining unit. Consequently, the only provisions that may be deemed inoperative under chapter 20 to ensure receipt of federal transit funds are those provisions that do not affect or impact the threshold analysis, contained in section 20.32, as to what the collective bargaining rights are for the bargaining unit as a whole. The Union submits a contrary analysis, similar to the analysis advocated for by the City, results in a system where collective

bargaining rights are determined in a manner not intended by the legislature when the HF 291 amendments were enacted.

1. State Law Determines the Collective Bargaining Rights of Iowa Public Sector Employees.

The Union argues state law determines the collective bargaining rights of Iowa public sector employees. Implicit in the City's assertions is the contention that the Department of Labor may determine the collective bargaining rights of Iowa's public sector employees. The Union submits the City's assertion is not consistent with applicable law, and it demonstrates the problem with the City's apparent position in this case.

In the absence of state law, public sector employees in Iowa did not enjoy the right to engage in collective bargaining with their public employers. Until the passage of the HF 291 amendments to chapter 20, all public employees represented by an employee organization enjoyed the same, substantive collective bargaining rights. However, following the adoption of the HF 291 amendments to chapter 20, the determination of substantive collective bargaining rights depended upon the composition of the employees in the bargaining unit as a whole. For public sector transit employees, the HF 291 amendments require the substantive bargaining rights of the bargaining unit to be determined by the application of section 20.32 to the entire bargaining unit.

(a) Iowa Code Chapter 20 Determines the Bargaining Rights of Public Sector Employees in Iowa.

As an initial matter, chapter 20 determines the collective bargaining rights of public sector employees in Iowa regardless of federal funding requirements. It is well established that the rights of state public employees to engage in collective bargaining are derived from the enactment of state public bargaining statutes. When Congress enacted the National Labor Relations Act (NLRA) in 1935, it specifically exempted public employers – governments and their agencies from the obligation to engage in collective bargaining. 29 U.S.C. §§ 151 - 169. (*See also*, 29 U.S.C. § 152(2), specifically excluding from the definition of employer under the NLRA "any state or political subdivisions thereof.") Public sector employees did not begin to secure rights similar to private sector employees until 1959 when Wisconsin was the first state to enact a public sector bargaining law. *Waterloo Ed. Assoc. v. Iowa Pub. Empl. Relations*, 740 N.W.2d 418, 420 (Iowa 2007). Fifteen years later, twenty-eight states had enacted comprehensive bargaining laws, and twelve states had adopted some form of collective bargaining. (*Id*.)

In Iowa, public sector employees did not have collective bargaining rights similar to private sector employees prior to the enactment

of chapter 20. The Iowa Supreme Court, in *State Bd. of Regents v. United Packing House Food and Allied Workers, Local 1258*, 175 N.W.2d 110, 113 (Iowa 1970), held that it was a legislative function to determine whether public employees should have "the advantages of collective bargaining in the full sense as it is used in private industry. . . ." Shortly after the Iowa Supreme Court's decision in *Board of Regents*, the Iowa legislature adopted "a comprehensive bill for the regulation of public employment labor relations in Iowa" that gave public sector employees the advantages of collective bargaining in the full sense referenced in the *Board of Regents* case. Lawrence E. Pope, "Analysis of the Iowa Public Employment Relations Act," 24 Drake L. Rev. Fall 1974 1, 2. The comprehensive bill enacted by the Iowa Legislature became what is known as "Chapter 20."

Chapter 20's enactment resulted in a legislative scheme whereby Iowa law now detailed the method by which public employees selected a bargaining representative, and the topics and manner in which the selected, exclusive bargaining representative would engage in collective bargaining with the employer. Lawrence E. Pope, "Analysis of the Iowa Public Employment Relations Act," 24 Drake L. Rev. Fall 1974 1, 2-3. In this regard, chapter 20 granted the same bargaining rights to all public employees covered by the chapter regardless of the type of work performed

by the public employee. Specifically, section 20.9 listed the mandatory topics of collective bargaining between the employee organization and the public employer:

> The public employer and the employee organization shall meet at reasonable times, including meetings reasonably in advance of the public employer's budget-making process, 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 and other matters mutually agreed upon. Negotiations shall also include terms authorizing dues checkoff for members of the employee organization and grievance procedures for resolving any questions arising under the agreement, which shall be embodied in a written agreement and signed by the parties. . . . (Iowa Code § 20.9, 1974) (App. 234).

The right to bargain over any of the topics listed applied to all public sector bargaining units regardless of the composition of the bargaining unit. In turn, it did not matter for the purpose of engaging in collective bargaining whether the members of the bargaining unit were employed as transit employees, police officers, school teachers, or in any other position because every public employee represented by a certified employee organization enjoyed the same collective bargaining rights.

The legislature left section 20.9 largely undisturbed until 2017. In 2017, the legislature passed HF 291, which was signed into law on February 17, 2017. *AFSCME Iowa Council 61 v. State*, 928 N.W.2d 21, 28 (Iowa 2019). The HF 291 amendments changed the scope of mandatory subjects of collective bargaining, arbitration, and eliminated payroll deductions for union dues. (*Id*.) The HF 291 amendments also changed the manner in which the scope of bargaining rights was determined. (*Id*. at 28-29). The determination of whether certain topics of bargaining where mandatory depended now upon the type of employees contained in the bargaining unit. (*Id*.) Significantly, while the amendments changed the scope of mandatory subjects of collective bargaining, the HF 291 amendments did not alter the fact that state law determines the collective bargaining rights for public sector employees in Iowa. *See generally*, Iowa Code Chapter 20 (2017).

In sum, the Union argues there can be no real dispute that state law governs collective bargaining rights for public sector employees in Iowa. The NLRA does not apply to public sector employees in Iowa. Prior to the enactment of chapter 20, public sector employees did not enjoy collective bargaining in the full sense. The enactment of chapter 20 first conferred bargaining rights upon Iowa's public sector employees. And, the

HF 291 amendments to chapter 20 did nothing to alter the fact that Iowa law determines the collective bargaining rights for public sector employees.

b. Section 20.32 is the Procedural Mechanism for Determining the Substantive Collective Bargaining Rights for Bargaining Units that Include Transit Employees.

The Union urges section 20.32 is the procedural mechanism for determining the collective bargaining rights of bargaining units that include transit employees. As noted above, bargaining rights for public sector employees in Iowa are granted by statute. Additionally, as noted previously, prior to the adoption of the amendments to chapter 20 contained in HF 291, all public sector employees regardless of position and/or type of bargaining unit enjoyed the same bargaining rights. To the extent, then, that the HF 291 amendments to chapter 20 changed the bargaining rights afforded to public sector employees, the express provisions of section 20.32 mandate the method by which bargaining units that include transit employees bargaining rights are to be determined as a whole. Review of the statute supports the Union's position.

The HF 291 amendments to chapter 20 significantly altered the method by which collective bargaining rights are determined for public sector employees under Iowa law. Specifically, the HF 291 amendments created a new sub-category of public employees under chapter 20 – public

safety employees. Iowa Code § 20.3(11). The creation of the new sub-category of public safety employees is significant given the overall changes to the scope of collective bargaining provided by chapter 20.

Under the new collective bargaining scheme contained in the HF 291 amendments, the scope of mandatory topics of collective bargaining was reduced to "base wages." Iowa Code § 20.9(1). However, if a bargaining unit contains more than thirty percent public safety employees in the bargaining unit, the statute requires mandatory bargaining over a greater number of topics. (*Id*.) Thus, unlike the previous statutory framework, where the type of work performed by the public employees did not matter nor did the composition of the bargaining unit itself, the HF 291 amendments placed both – the type of work performed by the public sector employees and the composition of the bargaining unit – into question. Iowa Code § 20.3(11) and § 20.9(1). The composition of employees in the bargaining unit based upon their respective positions now determines the mandatory collective bargaining rights for a particular bargaining unit. *AFSCME Iowa Council 61*, 928 F.2d at 28-29; Iowa Code § 20.3(11) and § 20.9(1).

The import of the thirty percent threshold for the presence of public safety employees contained in section 20.9(1) is the recognition by

the legislature that there were existing bargaining units with both public safety and non-public safety employees contained within the same bargaining unit. *AFSCME Iowa Council 61*, 928 N.W.2d at 39. Instead of amending Chapter 20 to create stand alone public safety units, similar to Wisconsin, the legislature simply set the thirty percent threshold for determination of whether a particular bargaining unit would have more expansive mandatory collective bargaining rights. *Id*. at 35. And, the Iowa Supreme Court found the threshold constitutional, even if the result was that employees performing the same work enjoyed different collective bargaining rights. *Id*. at 39.

The legislature's decision regarding the expanded mandatory bargaining rights for public safety employees if the thirty percent threshold was met was not the only statutory change contained in chapter 20. In addition to the creation of the sub-category of public safety employees, the legislature also granted bargaining units with transit employees expanded bargaining rights under certain conditions with the inclusion of section 20.32. Section 20.32 states the following:

> 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 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.

Thus, under section 20.32, if federal funding is jeopardized under 49 U.S.C. § 5333(b), section 20.32 provides that transit employees enjoy all provisions of chapter 20 applicable to public safety employees on the same terms and same conditions available to public safety employees, including the expansion of expanded, substantive bargaining rights if the thirty percent threshold is met.

The Union submits the practical reality of section 20.32, then, is the following. First, if federal funding is not jeopardized under 49 U.S.C. § 5333(b), the amendments to chapter 20 contained in HF 291 apply to a bargaining unit, which includes transit employees, as if such employees are not public safety employees regardless of the number of transit employees in the bargaining unit. Simply put, in the absence of the jeopardization of federal funds, transit employees in any bargaining unit are limited to negotiations over "base wages" and any other legal topic mutually agreed to by the parties. Iowa Code § 20.9(1).

Second, if receipt of federal funding is jeopardized, section 20.32 makes applicable to transit employees in a bargaining unit all

provisions of section 20.3(11) applicable to public safety employees. The result of the application of section 20.3(11) is that if the bargaining unit has a composition of greater than thirty percent transit employees, the bargaining unit will enjoy expanded mandatory topics of collective bargaining under section 20.9(1). Conversely, if the bargaining unit is comprised of less than thirty percent transit employees, the bargaining unit will not be afforded expanded mandatory collective bargaining rights despite the presence of transit employees in the bargaining unit. And, as the Iowa Supreme Court ruled in *AFSCME Iowa Council 61*, 928 N.W.2d 21, there is nothing unconstitutional about such a result.

In either case, the Union urges section 20.32 governs the collective bargaining rights of bargaining units that include transit employees. The HF 291 amendments to chapter 20 changed the method by which collective bargaining rights are conferred upon public sector employees. Under the HF 291 amendments, the type of work performed by members of the bargaining unit and the presence of public safety employees or transit employees in a particular bargaining unit now determines the collective bargaining rights of the bargaining unit. The resulting difference in rights to mandatory subjects of collective bargaining for public sector employees performing the same work, however, does not offend the Iowa

Constitution, even though those rights are determined on a bargaining unit wide basis. And, to ensure the continued receipt of federal funding, the Union submits the legislature created section 20.32 that, if applied, applies to bargaining units on a bargaining unit-wide basis, which may result in expanded bargaining rights for non-transit employees based upon the overall composition of the bargaining unit.

2. The Determination that Receipt of Federal Transit Funding is Jeopardized Must be Made Prior to the Application of Section 20.32, and Only After Such Determination Results in the Conclusion that Receipt of Federal Funding is Jeopardized may PERB Apply Chapter 20 in a Manner that Ensures Receipt of Federal Funding through the Application of Section 20.32.

The Union urges the determination that receipt of federal funds is jeopardized by the application of certain provisions of chapter 20 requires PERB to apply chapter 20 in a narrow manner so as to preserve federal funding. The determination that receipt of federal transit funds is jeopardized is made by the Department of Labor. Such determination in this case was made after the Department of Labor analyzed the entirety of chapter 20. Once the Department of Labor determined that receipt of federal transit funds was jeopardized by the application of certain provisions of the HF 291 amendments to chapter 20, the duty to ensure continued receipt of federal transit funds shifted to PERB under the express provisions of chapter

20. The express provisions of chapter 20 require PERB to apply chapter 20 in a narrow manner.

a. Prior to the Application of Section 20.32, the Department of Labor Must First Determine that the Substantive Collective Bargaining Provisions of the HF 291 Amendments to Chapter 20 Jeopardize Receipt of Federal Funds.

The Union submits that the initial question of whether receipt of federal funds is jeopardized with respect to federal transit funds rests with the Department of Labor. Without guidance from the Department of Labor, which grants the funds for use by the State of Iowa and its political subdivisions, PERB is without a mechanism for knowing that receipt of federal funds is jeopardized by the application of chapter 20. To this end, there is no question that the federal government determines whether to dispense its own funds to states and localities based upon the requirements for receipt of those funds. It is also settled law that the federal government may attach requirements to the receipt of federal funds. *South Dakota v. Dole*, 483 U.S. 203, 206-07 (1987). When it comes to federal transit funds, the requirement for receipt of federal funds is dependent upon ensuring the continuation of substantive collective bargaining rights for transit employees. 49 U.S.C. § 5333(b). The determination of whether the protections sufficiently protect the substantive collective bargaining rights of

transit employees, however, necessarily includes an analysis of the entirety of chapter 20.

b. <u>49 U.S.C. § 5333(b) does not Mandate a Specific Statutory Scheme for State Law.</u>

49 U.S.C. § 5333(b)(1) conditions receipt of financial assistance to states and local governments upon the condition that the interests of employees affected by the assistance "shall be protected under arrangements the Secretary of Labor concludes are fair and equitable." These arrangements are referred to as "13(c) agreements or protections." 49 U.S.C. § 5333(b)(2) requires that the arrangements include

> . . . . provisions that may be necessary for - -
> (A) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise;
> (B) the continuation of collective bargaining rights;
> (C) the protection of individual employees against a worsening of their positions related to employment;
> . . . .
> 49 U.S.C. § 5333(b)(2).

If these conditions are present, the Secretary of Labor will certify that the § 13(c) protective agreement meets the necessary prerequisites for the receipt of federal transit funding. Conversely, if these conditions are not present,

the Secretary of Labor will not certify that the § 13(c) protective agreement meets the necessary prerequisites for the receipt of federal transit funding.

When Congress debated the enactment of the § 13(c) protections, Congress was concerned with the increasing precarious financial conditions of private transportation companies across the country and the fear that many communities may be left without adequate mass transportation. *Jackson Transit Authority v. Local Division 1285, Amalgamated Transit Union, AFL-CIO-CLC*, 102 S.Ct. 2202, 2204 (1982). In turn, Congress sought to balance the interest of preserving mass transportation by transferring federal aid to local governments to acquire failing private transportation companies with the collective bargaining rights of unionized transit workers. (*Id*.) In order to protect the bargaining rights of those workers, Congress included the § 13(c) protections within § 13(c) of the Urban Mass Transportation Act of 1964, now codified at 49 U.S.C. § 5333(b). (*Id*.)

The continuation of bargaining rights under § 13(c) is a mandatory provision that requires the continuation of bargaining rights in order for the receipt of federal funding regardless of the provisions of state law. In *Amalgamated Transit Union International, AFL-CIO v. Donovan*, 767 F.2d 939 (D.C. Circuit 1985), the Court of Appeals for the D.C. Circuit

examined and applied the legislative history regarding the interplay between § 13(c) protections and contrary state law. In doing so, the D.C. Circuit noted:

> Section 13(c) does not prescribe mandatory labor standards for states, but rather dictates the terms of federal mass transit assistance. States are free to forego such assistance and thus to adopt any collective bargaining scheme they desire; the mandatory language of section 13(c) in no way alters this prerogative. But the statute does not allow states to eliminate collective bargaining rights and still enjoy federal aid. Section 13(c) prevents such a result by prohibiting the Secretary from certifying labor agreements that do not provide for the continuation of collective bargaining rights. (*Id*. at 948).

Under § 13(c), a state may enact its own bargaining scheme or develop a different bargaining regime, but if the state does not maintain the continuation of bargaining rights for transit employees, the state puts its ability to receive federal aid in jeopardy.

In *Donovan*, the D.C. Circuit held that states were not prohibited from enacting provisions related to collective bargaining for transit workers which were different from collective bargaining rights provided to employees under the National Labor Relations Act. *Donovan*, 767 F.2d at 949-50. However, the D.C. Circuit stated the following with respect to the Section 13(c) requirements:

> Section 13(c)'s requirement, therefore, that labor protective agreements provide for "the continuation of collective bargaining rights" means, at a minimum, that where employees enjoyed collective bargaining rights prior to public acquisition of the transit system, they are entitled to be represented in a meaningful, "good faith" negotiations with their employer over wages, hours and other terms and conditions of employment. Collective bargaining does not exist if an employer retains the power to establish wages, hours and other conditions of employment without the consent of the union or without at least first bargaining in good faith to impasse over disputed mandatory subjects. . . . (*Id*. at 951).

In turn, under *Donovan*, in order to receive federal funding, the continuation of bargaining rights must be preserved, which necessarily includes good faith negotiations over wages, hours, and other terms and conditions of employment.

Under the precedent of *Jackson Transit Authority* and *Donovan*, the Union submits it is clear that states may enact their own collective bargaining regimes. However, in doing so, the ability to continue to receive federal transit funds is conditioned upon the requirement that the rights, privileges, and benefits existing under a collective bargaining agreement are preserved and continued. As a practical matter, then, a state may decide that public sector bargaining is no longer legal or otherwise limit collective bargaining, but if a state chooses to do so, the state will not continue to

receive federal transit funding if protections are not put in place to ensure the continuation and preservation of bargaining rights for transit workers.

Taken together, the Union urges federal precedent establishes that 49 U.S.C. § 5333(b) does not require states to enact a specific collective bargaining regime. Indeed, states are free to have their own system of collective bargaining. In order to receive federal transit funding, however, a state statutory scheme may not reduce or otherwise abrogate existing collective bargaining rights for transit employees. If such changes reduce or otherwise abrogate existing collective bargaining rights for transit employees, a state jeopardizes its ability to receive federal transit funding.

c. The Department of Labor's Determination that the HF 291 Amendments to Chapter 20 Jeopardized Receipt of Federal Transit Funds Necessarily Included an Analysis of the Entirety of Chapter 20.

The Union argues the Department of Labor's determination that the HF 291 amendments to chapter 20 jeopardized receipt of federal transit funds necessarily included an analysis of the entirety of chapter 20 including the application of section 20.32. The Union submits it is apparent from the Department of Labor's communication to the City, the Iowa Department of Transportation, and the Union that the Department of Labor engaged in an analysis of the entirety of Chapter 20. To this end, review of the Department

of Labor's letter to the City, the Iowa Department of Transportation, and the Union dated June 7, 2017 demonstrates an analysis of the entire statute. (App. 252-53). In pertinent part, the letter stated the following:

> The Department has concluded that a Recipient's application of HF 291 to its transit employees, whether they are deemed public safety or public non-safety employees, would render the Recipient unable to comply with the requirements of 49 U.S.C. § 5333(b)(1) and (2), as provided for in the terms and conditions included in the Department's referral. (*Id*. at 253).

The Union urges this sentence is critical because it establishes that the Department of Labor began with the correct application of chapter 20 to a bargaining unit comprised, in part, of transit employees and then determined that the substantive collective bargaining rights conferred upon transit employees under section 20.9(1) did not adequately protect the collective bargaining rights of transit employees under 49 U.S.C. § 5333(b).

The critical phrase in the sentence is "whether they are deemed public safety or public non-safety employees." The only way in which a transit employee could be deemed a public safety employee under the HF 291 amendments to chapter 20 is if section 20.32 applied. The prerequisite for section 20.32 to apply is for the receipt of federal transit funds to be jeopardized. In this case, there is no dispute that federal transit funds are jeopardized. Because the receipt of federal transit funds is jeopardized,

under section 20.32, the provisions of chapter 20 applicable to public safety employees are now applicable on the same terms and to the same degree to a bargaining unit, which includes transit employees. Iowa Code § 20.32. In this case, the significance of this fact is that because the bargaining unit as a whole is comprised of more than thirty percent transit employees, the bargaining unit must be considered a public safety bargaining unit.

Further, given the sentence cited above, the Union argues there can be no real dispute that the Department of Labor began its analysis of whether there were sufficient protections for transit workers by first examining the application of section 20.32 to the bargaining unit. A different conclusion is simply untenable given the text of the Department of Labor's letter because there is no other mechanism by which a bargaining unit containing transit employees could obtain the substantive collective bargaining rights of public safety bargaining units under the HF 291 amendments to chapter 20. The importance of the Department of Labor's decision to begin its analysis in this manner is the following.

The June 7, 2018 letter from the Department of Labor did not find nor state that the application of section 20.32 in of itself to determine the substantive collective bargaining rights of the bargaining unit as a whole was inappropriate. (App. 252-53). Instead, the letter indicated that once the

analysis extends past the initial triggering of section 20.32, the application of the other amended provisions of chapter 20 - sections 20.3(11), 20.9(1), and 20.15 were not sufficient to ensure the adequate continuation of bargaining rights. (*Id*.) Put somewhat differently, the Department of Labor did not quibble with whether the analysis of a bargaining unit, which includes transit employees, should begin with the application of section 20.32 to the bargaining unit as a whole. Rather, the Department of Labor's problem was that ***after*** section 20.32 was applied to the entire bargaining unit, the collective bargaining rights potentially afforded to a bargaining unit containing transit employees under sections 20.3(11) and 20.9(1) did not provide adequate continuation of bargaining rights for the transit employees in the bargaining unit.[1]

[1] The Union urges it is apparent the Department of Labor's concern with the HF 291 amendments was three-fold. First, the use of section 20.32 to convey the substantive bargaining rights upon transit employees under Iowa section 20.9(1) would not consistently ensure the application of expanded bargaining rights to transit employees if the total number of transit employees in the bargaining unit did not exceed the thirty percent threshold. That being said, the use of section 20.32 in of itself as a mechanism to determine the substantive collective bargaining rights of a bargaining unit as a whole, which includes transit employees, does not violate the requirements of 49 U.S.C. § 5333(b). Second, as noted in the letter, the Department of Labor was also concerned with the removal of certain collective bargaining topics. Finally, the application of section 20.32 to determine the substantive collective bargaining rights for the bargaining unit failed to address the Department of Labor's concerns regarding retention and recertification elections. Ultimately, however, there is no evidence that the Department of

The Union urges the significance of the Department of Labor's conclusion that federal transit funds were jeopardized, then, is that the Department of Labor engaged in the proper analysis of determining the collective bargaining rights of bargaining units, which include transit employees, under the HF 291 amendments to chapter 20. The Department of Labor did not simply look at the HF 291 amendments and state that in order to ensure receipt of federal funding section 20.27 had to apply. Rather, the Department of Labor began with an analysis of section 20.32 as applied to the bargaining unit as a whole, and then determined that after section 20.32 applied, the application of section 20.3(11) and section 20.9(1) did not sufficiently protect the continuation of bargaining rights for transit employees. Critically, in no case however, did the Department of Labor's letter indicate that application of section 20.32 to determine the substantive collective bargaining rights of the bargaining unit as a whole jeopardized the receipt of federal funds.

Labor was concerned with utilizing section 20.32 as a mechanism for determining what the substantive collective bargaining rights for a bargaining unit, which included transit employees, are for the bargaining unit as a whole. Put another way, until section 20.32 is applied, there is no mechanism by which the substantive collective bargaining rights of a bargaining unit that includes transit employees can be determined.

d. The Express Language of Chapter 20 Requires PERB to Apply Chapter 20 in a Narrow Manner to Preserve Receipt of Federal Funding.

Because the Department of Labor determined that receipt of federal funds was jeopardized, the Union urges the express language of chapter 20 requires PERB to apply chapter 20 in a narrow manner to preserve federal funding. A review of chapter 20 demonstrates the legislature's intent to preserve receipt of federal funding in the event that application of chapter 20's provisions jeopardize receipt of federal funding. The legislature enacted sections 20.27 and 20.32 to serve this purpose. Examination of the relevant statutory scheme also establishes that the preservation of receipt of federal funds must occur in a manner that also applies chapter 20 to the greatest extent possible.

States, including Iowa, may enact their own set of laws for collective bargaining involving public sector transit employees. *Donovan*, 767 F.2d at 948. However, the federal government may condition receipt of federal transit funds upon a state's adherence to certain collective bargaining rights for transit employees affected by the state law. (*Id*.) In this case, the legislature, understanding that the federal government may condition receipt of federal funds upon certain collective bargaining protections, enacted two provisions, albeit at different times, to safeguard the receipt of federal transit

funds, Sections 20.32 and 20.27.[2] While Sections 20.27 and 20.32 may differ in application, both exist to serve the same purpose – the preservation of federal funding.

PERB's ability to administer sections 20.32 and 20.27 to preserve receipt of federal funds is limited by the express language of the statute. First, as discussed above, section 20.32 acts to preserve receipt of federal funds in a limited circumstance. Specifically, section 20.32 seeks to preserve receipt of federal funds when receipt of federal transit funds is jeopardized because transit employees lack certain substantive collective bargaining rights required by federal law. Section 20.32, then, is applied to a specific factual situation to preserve federal funding in a limited circumstance.

Second, while section 20.32 is specific in nature, section 20.27 is more general in nature. Section 20.27 provides the following:

> If any provision of this chapter jeopardized 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 to be inoperative. Iowa Code § 20.27.

[2] Section 20.27 was enacted when Iowa Code Chapter 20 became law. (App. 246). Section 20.32 became law with the enactment of the HF 291 amendments in 2017. (App. 101-02).

To the extent that PERB administers section 20.27 to preserve federal funding, the express language of section 20.27 requires section 20.27 to be applied in a limited fashion.

In this regard, section 20.27 provides that if any provision of chapter 20 jeopardizes the receipt of federal funds, "the provisions of this chapter shall, insofar as the fund is jeopardized, be deemed to be inoperative." Iowa Code § 20.27. The Union submits the express language of section 20.27 only permits its use to preserve the receipt of federal funding to the extent federal funding is jeopardized. Put another way, if federal funds are jeopardized, PERB may only administer section 20.27 in a narrow manner that deems inoperative only the offending provisions to the extent such provisions jeopardize the receipt of federal funds.

The Union argues the significance of the express language of section 20.27 is two-fold. First, PERB is charged with administering the provisions of section 20.27. Iowa Code § 20.6(1). Second, section 20.27's express language requires the administration of its provisions in a limited manner. The City's position, however, ignores these two requirements, and as a result, the City's position, the Union submits, lacks merit.

In its Brief, the City essentially argues that it is the responsibility of the parties along with the United States Department of

Labor to determine which provisions of chapter 20 jeopardize federal funding, and then, those provisions are deemed "inoperative." Indeed, in its June 7, 2017 letter, the United States Department of Labor wrote that it was granting interim certification for the receipt of federal transit funds based on the understanding and acknowledgment of the Iowa Department of Transportation, the recipients of federal funding, and the unions that section 20.27 provides a mechanism to insure for compliance with 49 U.S.C. § 5333(b). (App. 252-53). The problem, however, is that the Iowa Department of Transportation, the City, and the Union are not granted the statutory authority to administer the provisions of chapter 20 – only PERB is granted such authority.

As the Iowa legislature granted PERB the right to administer section 20.27, the legislature also charged PERB with applying section 20.27 only "insofar as the fund is jeopardized" to deem inoperative other provisions of Chapter 20. The significance of this statutory design is the following. In its June 7, 2017 letter, the United States Department of Labor cited two problems with the HF 291 amendments to chapter 20 – the removal of mandatory subjects of collective bargaining and the retention and recertification elections – as the basis for its position that Iowa law no longer provided adequate continuation of bargaining rights for transit employees.

(App. 252-53). The United States Department of Labor did not identify any specific concerns with sections 20.1 – 20.8, 20.10 – 20.14, 20.16 – 20.20, or 20.23 – 20.33. (*Id*.) To the extent, then, that some of these provisions were modified by the HF 291 amendments to chapter 20, there is no evidence that application of these provisions would jeopardize the receipt of federal funding.[3]

Critically, the Union argues there is nothing in the United States Department of Labor's correspondence that states PERB's application of section 20.32 to the entire bargaining unit to initially determine the substantive bargaining rights of the bargaining unit as a whole would jeopardize the receipt of federal transit funds. Section 20.32 does not establish mandatory bargaining topics nor does it require retention and recertification elections. Rather, section 20.32 simply establishes the procedure by which mandatory bargaining topics are determined for a bargaining unit that includes transit employees. The United States Department of Labor's problem, then, is not that the application of section 20.32 in of itself acts as a procedure for the establishment of bargaining

[3] The Union submits the Department of Labor limited its analysis of the HF 291 amendments to chapter 20 to the extent the HF 291 amendments offend 49 U.S.C. § 5333(b). In this regard, to the extent that the HF 291 amendments to chapter 20 jeopardize receipt of federal funds, the Department of Labor only specifically identifies sections 20.9(1) and 20.15 as offending the requirements of 49 U.S.C. § 5333(b). (App. 252-53).

rights for transit employees, but rather, that after the procedure is adhered to, the end result of applying section 20.9(1) does not guarantee the continuation of bargaining rights. The problem is not the application of section 20.32; the problem is that the HF 291 amendments to chapter 20 modified the mandatory list of bargaining topics contained in section 20.9 and created retention and recertification elections in section 20.15. It is the application of sections 20.9 and 20.15, then, that jeopardizes federal funding.

The Union urges the application of section 20.32 to determine the collective bargaining rights of a bargaining unit, which includes transit workers, does not jeopardize the receipt of federal funding as required for the triggering or application of section 20.27. Because section 20.27's express language requires it to be applied in a limited manner, the express language of section 20.27 does not permit PERB to utilize section 20.27 to deem inoperative section 20.32 to the entire bargaining unit. Instead, contrary to the City's position, section 20.27 requires PERB to preserve federal funding in a limited fashion by deeming sections 20.9(1) and 20.15 only inoperative. The Union submits a contrary reading of section 20.27 would be at odds with the express language of the statute.

e. The Proper Analysis for the Determination of the Substantive Bargaining Rights for a Bargaining Unit that Includes Transit Employees is to First Determine Whether Receipt of Federal Funds is Jeopardized and then Apply Section 20.32 to the Entire Bargaining Unit.

The Union argues the proper analysis for determining the substantive collective bargaining rights of a bargaining unit, which includes transit employees, is first to determine whether receipt of federal funds is jeopardized and then to apply section 20.32 to the bargaining unit to determine the substantive collective bargaining rights of the bargaining unit as a whole. Specifically, the Union submits the proper analysis for determining the substantive collective bargaining rights of a bargaining unit comprised, in part, of transit employees is the following.

First, PERB must ascertain whether there are transit employees in a particular bargaining unit. Second, if there are transit employees in a particular bargaining unit, PERB must determine whether receipt of federal funds is jeopardized. Third, if receipt of federal funds is jeopardized, section 20.32 must be applied to determine the substantive collective bargaining rights of the bargaining unit under sections 20.3(11) and 20.9(1). Fourth, if it is determined that application of the substantive collective bargaining rights contained in Section 20.9(1) to the bargaining unit as a whole does not

adequately protect receipt of federal funds, PERB must deem inoperative only the offending provisions of chapter 20 to the extent receipt of federal funding is jeopardized. Similarly, to the extent application of any provision of chapter 20 does not specifically jeopardize receipt of federal funds, PERB must leave those provisions as applied intact.

The Union urges this analysis is the proper method for determining the collective bargaining rights for a bargaining unit, which includes transit employees, as a whole. This analysis is consistent with the statutory scheme and legislative intent because it gives effect to the entire statute. Most important, however, it is consistent with the express language of section 20.27 requiring provisions of chapter 20 that jeopardize receipt of federal funds to be deemed inoperative only insofar as funding is jeopardized.

3. The District Court and PERB Properly Construed Chapter 20 to Give Proper Effect and Meaning to Section 20.32.

The Union argues the District Court and PERB properly construed chapter 20 to give proper effect and meaning to section 20.32. In this regard, the Union urges the City's contention that section 20.32 is clear and unambiguous lacks merit because reasonable minds differ as to section 20.32's meaning. Further, review of the decisions by the District Court and

PERB demonstrates that their decisions correctly interpret and apply section 20.32. And, the City's contention that the conditions precedent for the application of section 20.32 were not satisfied lacks merit.

a. The City's Contention that Iowa Code Section 20.32 is Clear and Unambiguous Lacks Merit.

The Union urges the City's contention that section 20.32 is unambiguous lacks merit. It is clear that if reasonable minds could disagree as to the statute's meaning, the statute is ambiguous. *United Electrical, Radio, and Machine Workers of America v. Iowa Pub. Empl. Rel. Bd.*, 928 N.W.2d 101, 109 (Iowa 2019); *see also*, *Holstein Elec. v. Breyfogle*, 756 N.W.2d 812, 815 (Iowa 2008) (internal citations omitted). To this end, ambiguity may arise (1) from the meaning of the particular words; or (2) from the general scope and meaning of a statute when all of its provisions are examined. *Holstein Elec.*, 756 N.W.2d at 815.

Here, the Union urges it is quite clear that reasonable minds differ both with respect to the meaning of the particular words and the general scope and meaning of the statute when all of its provisions are examined. The Union submits the City's position regarding ambiguity suffers from two fatal flaws. First, the entirety of the City's position rests upon the Legislature's use of the term "transit employees" in section 20.32. It appears that the City's position is that the use of the term "transit

employees" in section 20.32 means to the exclusion of all other types of employees.

The problem, however, with the City's sole focus on the term "transit employees" is that it ignores what section 20.32 grants to "transit employees." Specifically, the City's position ignores the phrase "[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. The use of this preceding phrase in the statute necessarily places "transit employees" in the same position as public safety employees defined in section 20.3(11). The question then becomes whether placing "transit employees" in the same position as public safety employees results in the determination of the substantive bargaining rights of a bargaining unit, which includes "transit employees," in the same manner as a bargaining unit containing public safety employees.

It is the Union's position that the answer to this question is in the affirmative because the language states that all provisions of chapter 20 applicable to public safety employees are applicable to "transit employees" "on the same terms and to the same degree" if certain conditions are met. 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. Iowa Code § 20.9(1). Such a reading of the statute gives effect to the legislature's decision to apply all provisions of chapter 20 applicable to public safety employees on the same terms and to the same degree to transit employees. Succinctly put, there is ambiguity in section 20.32 as to the general scope of the provision with respect to whether the manner in which the substantive collective bargaining rights of a bargaining unit containing transit employees is determined. *Holiday Inns Franchising, Inc. v. Branstad*, 537 N.W.2d 724, 728 (Iowa 1995).

Second, the terms "written confirmation" and "determination" are equally ambiguous. The City asserts that the condition precedent for the application of section 20.32, the determination "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" has not been met nor can it be met. Because the City contends that the Department of Labor does not provide "written confirmation" that receipt of federal funds is jeopardized, the director of the department of transportation cannot "determine" whether

federal funds are jeopardized thereby triggering the application of section 20.32.

The Union urges the terms "written confirmation" and "determination" are ambiguous. At the outset, the parties agree that the application of the HF 291 amendments to the substantive bargaining rights of transit employees jeopardizes the receipt of federal funds. There is no dispute on this point. There should also be no dispute that the director of transportation, the City, and the Union are aware of such jeopardy because each of these entities were apprised as much by letter from the Department of Labor on June 7, 2017. (App. 252-53). There should also be no dispute that the director of transportation determined that receipt of federal funds is jeopardized if certain provisions of the HF 291 amendments are applied to transit employees – otherwise, the director of transportation's attorney would not have submitted to the Department of Labor a proposal to utilize section 20.27 to preserve federal funding. (App. 247-249). And, there is no dispute that the Department of Labor sent a letter to the parties, which was also addressed to the Iowa Department of Transportation, stating that application of the HF 291 amendments to chapter 20 jeopardized receipt of federal funds. (App. 252-53).

Nonetheless, the City disputes that the Department of Labor does not provide written confirmation as contemplated by section 20.32, and as a result, the City asserts the director of transportation cannot make a determination that federal funds are jeopardized if certain transit employees do not continue to enjoy certain substantive bargaining rights. Even assuming *arguendo* that the City's position has merit, there is a question as to whether the written confirmation provided in the June 7, 2017 letter from the Department of Labor, Office of Labor-Management Standards constitutes "written confirmation" so as to satisfy that portion of section 20.32. Similarly, there is also a question as to whether the director of transportation made a determination that receipt of federal funds is jeopardized by his decision to advocate for ignoring the procedural requirements of section 20.32 and instead to apply section 20.27.

Simply put, there can be no real dispute that reasonable minds differ as to the interpretation and application of section 20.32. And, for this reason, the Union argues the City's contention that section 20.32 is clear and unambiguous lacks merit.

b. The District Court and PERB Correctly Interpreted and Applied Section 20.32.

The Union argues the City's contention that the District Court and PERB impermissibly interpreted or applied section 20.32 lacks merit.

As the Union understands the City's assertion, it is that the interpretation and application of section 20.32 by the District Court and PERB does not comport with the rules of statutory construction. Specifically, the City's position appears to be that section 20.32 only applies to transit employees, the decisions by the District Court and PERB impermissibly expand bargaining rights, the decisions fail to maintain consistent bargaining rights, and interpreting section 20.32 not to apply to non-transit employees does not render the provision surplusage. (Ames Proof Br. at 24-28). The Union submits the City's analysis is flawed.

Preliminarily, as argued above, the Union urges that there can be no real dispute regarding the ambiguity of Section 20.32. When reasonable minds differ as to the scope and meaning of a statute, the Court will look to resolve ambiguity by examining "(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." *State v. Green*, 470 N.W.2d 15, 18 (1991) (citing *State v. Schlemme*, 301 N.W.2d 721, 723 (Iowa 1981)); *see also*, *Voss vs. Iowa Dept. of Transp., Motor Vehicle Division*, 621 N.W.2d 208, 211 (Iowa 2001); *IBP v. Harker*, 633 N.W.2d 322, 325 (Iowa 2001).

Further, when attempting to resolve ambiguity, the court examines the entire statute to interpret the ambiguous term(s) in a manner consistent with the statute as an integrated whole. *Colwell v. IA Dept. of Human Services*, 923 N.W.2d 225, 232-33 (Iowa 2019) (citing *Tow v. Truck Country of Iowa*, 695 N.W.2d 36, 39 (Iowa 2005)). In doing so, the court considers "the context of the provision at issue" in an effort "to interpret it in a manner consistent with the statute as an integrated whole." *Tow v. Truck Country of Iowa*, 695 N.W.2d 36, 39 (Iowa 2005) (citing *Griffin Pipe Prods. Co. v. Guarino*, 663 N.W.2d 862, 865 (Iowa 2003)). Due consideration to the context of the provision means giving "harmonious meaning to related sections and accomplishes the legislative purpose." *McSpadden v. Big Ben Coal Co.*, 288 N.W.2d 181, 188 (Iowa 1980) (citing *In re Estate of Bliven*, 236 N.W.2d 366, 367 (Iowa 1975); *Olson v. District Court*, 243 Iowa 1211, 1214, 55 N.W.2d 339, 340 (1952)). For the reasons set forth below, the Union urges the District Court and PERB interpreted and applied section 20.32 in a manner that was consistent with the statute as an integrated whole.

Foremost, the Union urges the District Court and PERB did not err in their analyses of section 20.32. In its Brief, the City asserts that "the legislature plainly stated in section 20.32 that the expanded bargaining rights would apply 'to any transit employee.'" (Ames Proof Brief at 25). The

Union submits the City's assertion is simply wrong. Section 20.32 does not state that transit employees receive expanded bargaining rights. Iowa Code § 20.32. Rather, section 20.32 states that if receipt of federal transit funds is jeopardized and certain conditions met, transit employees shall be subject to all of the provisions of chapter 20 on the same terms and to the same degree as public safety employees. (*Id.*)

Contrary to the City's assertion, public safety employees do not enjoy expanded bargaining rights unless the percentage of public safety employees in the bargaining unit is greater than thirty percent of the bargaining unit as a whole. Iowa Code § 20.9(1). If a bargaining unit contains less than thirty percent public safety employees as defined by section 20.3(11), those public safety employees in that particular bargaining unit do not enjoy expanded bargaining rights. Simply by virtue of meeting the definition of a public safety employee under section 20.3(11), a public safety employee does not enjoy expanded substantive bargaining rights.

The Union submits the City is correct that the legislature knows how to apply statutory provisions on a bargaining unit basis. The City's analysis, however, fails when it asserts that the legislature did not do as much with respect to bargaining units containing transit employees. The Union argues the legislature did do as much when it placed transit

employees on the same footing as public safety employees in certain circumstances under section 20.32. Put simply, the legislature did not create a separate method for determining the substantive bargaining rights of a bargaining unit that contains transit employees.

Moreover, the Union urges the City's position that the District Court and PERB erred because non-transit employees receive greater bargaining rights under their analyses lacks merit. Critically, in *AFSCME Iowa Council 61*, the Iowa Supreme Court expressly acknowledged that the manner in which the legislature created the thirty percent threshold for determining whether substantive bargaining rights are afforded to a bargaining unit would result in some public sector employees, who do not meet the definition of public safety employee, receiving expanded bargaining rights. *AFSMCE Iowa Council 61*, 928 N.W.2d at 39. Equally important, the Iowa Supreme Court stated such a result was a recognition by the legislature that the HF 291 amendments to chapter 20 did not create separate public sector bargaining units. (*Id*. at 35). And, the Iowa Supreme Court held this statutory scheme constitutional. (*Id*. at 39).

The Union argues the problem, then, with the City's contention is that it focuses upon one aspect of the Legislature's intent behind the enactment of the HF 291 amendments to Chapter 20, while ignoring another,

and that is, the determination of substantive collective bargaining rights is to be made on a bargaining unit wide basis. In doing so, the City's contention effectually ignores the Iowa Supreme Court's holding in *AFSCME Iowa Council 61*.

Conversely, the application and interpretation of section 20.32 by the District Court and PERB effectuates the legislature's intent behind the addition of section 20.32. PERB's decision treats the bargaining unit as a whole for the purpose of determining the substantive collective bargaining rights of the entire bargaining unit as required by section 20.32 and the HF 291 amendments to Chapter 20. PERB then only deems inoperative the provisions of Chapter 20 insofar as the application of those provisions jeopardize the receipt of federal funding. Whereas, the City's application of section 20.27 would impermissibly deem inoperative provisions of the statute and apply the statute in a manner where receipt of federal funds is not jeopardized – namely, the manner in which the substantive collective bargaining rights for the bargaining unit as a whole are determined.

Furthermore, the Union argues the City's assertion that the net effect of PERB's application of section 20.32 to the entire bargaining unit does not constitute a valid basis for determining the substantive bargaining rights of the entire bargaining unit lacks statutory support. The

underpinning of the City's position is its reliance upon section 20.27. The problem with the City's reliance upon section 20.27 is the following.

First, the City's position ignores the legislative intent behind the legislature's enactment of section 20.32. Prior to the HF 291 amendments to section 20.32, section 20.27 was enacted. Since the inception of chapter 20, there has always been a mechanism by which PERB could act to ensure the receipt of federal funding.

Second, because section 20.27 was enacted first, it necessarily follows that the enactment of section 20.32 was to serve some additional legislative purpose. It is apparent from the text of section 20.32 that the purpose was to treat transit employees in the same manner as public safety employees are treated for the purpose of determining substantive collective bargaining rights for the bargaining unit as a whole. The fact that the application of section 20.32 and the ensuing determination of substantive collective bargaining rights for a bargaining unit containing transit employees does not ultimately result in the consistent bargaining rights within a bargaining unit does not mean that section 20.32 should not be applied in the first place to determine the substantive collective bargaining rights of the entire bargaining unit.

Put another way, it is impossible to determine the substantive collective bargaining rights of a bargaining unit that includes transit employees as a whole without first applying section 20.32, and if such application does not adequately safeguard the receipt of federal funds, then section 20.27 must be applied to ensure receipt of such federal funds. Such application of section 20.32 is consistent with the overall legislative scheme even if the result does not maintain consistent bargaining rights within the bargaining unit.

Finally, the Union urges the City's contention that its interpretation of section 20.32 does not render section 20.32 surplusage lacks merit. The Union rests its position on two basic grounds. First, if there was no purpose for section 20.32, the legislature would have refrained from including it in the HF 291 amendments to chapter 20. As noted above, the enactment of section 20.27 proceeded the enactment of section 20.32. Given this fact and understanding the requirements of 49 U.S.C. § 5333(b), the legislature could have simply relied upon section 20.27 to protect the bargaining rights of transit employees. The Union submits the legislature did not choose this approach because, as previously argued, the legislature intended to convey substantive collective bargaining rights on a bargaining unit wide basis. In turn, PERB's decision effectuates this statutory purpose.

Second, the Union argues the City's position renders section 20.32 meaningless, a result not intended by the legislature. Under the City's position, there are no circumstances when the application of section 20.32 would apply – none. The Union submits the legislature did not enact section 20.32 so that it would never apply. Rather, the legislature, consistent with the decisions of the District Court and PERB, enacted section 20.32 to determine the substantive collective bargaining rights of bargaining units containing transit employees.

c. The City's Contention that the Conditions Precedent of Iowa Code § 20.32 were not Satisfied Lacks Merit.

The Union urges the City's contention that the conditions precedent for the application of section 20.32 have not been satisfied, and therefore, the application of section 20.32 is not warranted, lacks merit. The City's contention appears to be that because section 20.32 is unambiguous and due to the fact that the Iowa Director of Transportation did not determine that applying public safety bargaining rights to transit employees would safeguard federal funding as a result of the Department of Labor's failure to provide him with written confirmation of the potential loss of federal funding, the District Court and PERB erred in their decisions.

(Ames Proof Br. at 20-22). For the reasons set forth below, the Union submits the City's position lacks merit.

First, as discussed above, there can be no real dispute that section 20.32 is ambiguous. Second, the City's position reads into the statute language that is not present. Finally, the assertion that section 20.32's technical requirements cannot be met is simply disingenuous.

In its Brief, the City asserts "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." (City Brief at 21). On its face, this sentence misstates the requirements of section 20.32. Section 20.32 does not confer substantive bargaining rights upon transit employees. Rather, Section 20.32 is simply the procedural mechanism necessary to make the determination of what substantive bargaining rights are available to transit employees if receipt of federal funds is jeopardized.

Further, section 20.32's application does not hinge upon the conveyance of public safety bargaining rights. Instead, section 20.32 is triggered if the "public employer would lose funding under 49 U.S.C. §5333(b) if the transit employee is not covered under certain collective bargaining rights." Iowa Code § 20.32. The triggering of the application of

section 20.32 does not in of itself determine the substantive collective bargaining rights of transit employees. Application of section 20.9(1) determines those substantive bargaining rights. The Union submits all that is required for the application of section 20.32 is that receipt of federal funding is jeopardized due to the loss of certain bargaining rights without regard to what the substantive bargaining rights conferred are after the application of section 20.32. Consequently, the only thing that is needed for the application of section 20.32 is the loss of federal funding if transit employees are not covered under certain collective bargaining rights as required by 49 U.S.C. §5333(b).

Similarly, the Union argues the written confirmation required by section 20.32 is not that application of the procedural mechanism provided for in section 20.32 will necessarily cure the loss of federal funding, but rather, the written confirmation required is that federal funding will be lost if certain collective bargaining rights are not granted to transit employees. Section 20.32 does not grant substantive bargaining rights. Substantive bargaining rights are determined by the application of section 20.9(1). In turn, to contend that the written confirmation required by section 20.32 requires anything more than notice that receipt of federal funds is jeopardized, the Union submits, misstates the requirements of the statute.

The Union urges the City's misreading of the technical requirements of the statute is simply an effort to minimize the fact that the conditions precedent for the application of section 20.32 were met. The City's contention that section 20.32 does not apply in this case is based upon an affidavit provided by the Iowa Director of Transportation, Mr. Mark Lowe. Specifically, the City appears to rely upon the following portion of Mr. Lowe's affidavit to support its position:

> The United States Department of Labor has indicated that it does not provide any such written confirmation to state departments of transportation, and I, as the Director of the Iowa Department of Transportation (a state agency), have no legal authority to require an agency of the federal government to do so. As a result, I have no ability to complete the determination required in Iowa Code §20.32 to protect transit employees. Accordingly, this section is not applicable and has not been utilized to assure the receipt of federal transit funding. (App. 250).

The Union submits the Company's reliance upon Mr. Lowe's affidavit is fraught with problems.

First, as a preliminary matter, Mr. Lowe is the Iowa Director of Transportation. Mr. Lowe is not a PERB Board member. As such, Mr. Lowe does not have any authority to deem a provision of Chapter 20 applicable or inapplicable. The entity charged with such determination is PERB.

Second, and more important, the City should not be permitted to have it both ways. Specifically, 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, and at the same time, attack PERB's application of section 20.32, which necessarily found the receipt of federal funds to be jeopardized.[4] Nonetheless, this is exactly what the City asserts.

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[4] The Union urges the City's reliance upon Mr. Lowe's affidavit is problematic for an additional reason. In its Petition to Intervene and in its Brief to PERB, the Union argued PERB should decline to answer the questions posed by the City in its Petition for Declaratory Order, in part, because the questions in the petition would be more properly resolved in a different proceeding. *See*, Union Pet. for Intervention. (App. 271). To this end, PERB's administrative rule 621-6.4(1) allows for a proceeding to ascertain the substantive collective bargaining rights for a bargaining unit containing transit employees or at least one public safety employee. In those proceedings, which are adversarial in nature, the parties are allowed to present witnesses. In this case, had PERB refused to issue a declaratory order, the parties would have been required to comply with this process under PERB's administrative rules. In those proceedings, the Union would have been given the opportunity to fully explore the position taken by Mr. Lowe in his statement, and the Union submits it is likely that Mr. Lowe would have had to explicitly acknowledge that he understood receipt of federal transit funds was jeopardized by the application of certain provisions of the HF 291 amendments to chapter 20 as well as acknowledging that the Department of Labor provided such information to him in writing as a result of the June 7, 2017 letter from the Department of Labor.

That being said, however, the decision by PERB to provide answers to the City's Petition for Declaratory Order rather than declining to answer all of the questions presented represents harmless error as PERB's answers to

The Union submits the City's position is disingenuous. The Iowa Director of Transportation understands that receipt of federal transit funds is jeopardized if certain provisions of the HF 291 amendments to Iowa Code Chapter 20 are applied to transit workers. *See*, (App. 247-51). Indeed, the United States Department of Labor stated as much in its June 7, 2017 letter, which went to the Iowa Department of Transportation amongst other entities. (App. 252-53). Section 20.32 does not prescribe the manner in which written confirmation must be conveyed to the Director of the Iowa Department of Transportation that receipt of federal funds is jeopardized. The statute does not state that the United States Department of Labor has to send a letter to the director of the department of transportation solely. The only requirement is that there is written confirmation. Iowa Code § 20.32. The reason for the written confirmation requirement is to establish that there is a documentary basis for the conclusion that receipt of federal transit funds are jeopardized.[5] And, because Mr. Lowe asserts Section 20.27 must be

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the City's Petition for Declaratory Order resulted in the correct application of Iowa Code § 20.32 for the purpose of determining the substantive collective bargaining rights for the bargaining unit as a whole.

[5] Mr. David Gorham, a Special Assistant Attorney General in the Office of the Attorney General for the Iowa Transportation Division, wrote to the Department of Labor on April 25, 2017. (App. 247-49). In the letter, Mr. Gorham notes that there is no clear authority for the Iowa legislature to require the Department of Labor to provide written confirmation that receipt of federal funding is jeopardized. (*Id*.) While the Union acknowledges as

applied to ensure receipt of federal funds, there can be no dispute that Mr. Lowe had knowledge that the necessary jeopardization of funding required for the application of Section 20.32 was present. Here, at a minimum, the documentary basis required by Section 20.32 is the June 7, 2017 letter. The Union urges it is disingenuous for the City to assert that Section 20.32 does not apply, but then, assert that Section 20.27 applies because the same transit funds at issue are jeopardized.

Finally, the Union argues the City's characterization of what Mr. Lowe's affidavit states as to what he could determine is not supported by the affidavit itself. As noted above, the City asserts that Mr. Lowe could not make a determination "that the City would lose federal funds unless public safety bargaining rights were provided to transit employees." (Ames Proof Brief at 20-21). In fact, according to his affidavit, Mr. Lowe asserted he did not make ***any*** determination regarding the applicability of section

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much, the Union submits Mr. Gorham's analysis misreads the requirements of Iowa Code § 20.32 and the 13(c) process. If application of state law violates the 13(c) protections, the Department of Labor will not certify a protective arrangement as satisfying the requirements of 49 U.S.C. § 5333(b). The Department of Labor will necessarily communicate its position, in writing to the parties, which in this case included the Iowa Department of Transportation. In turn, as argued above, because Iowa Code § 20.32 only requirement is that there is some form of written confirmation, which is, at a minimum the June 7, 2017 letter, the Union urges the June 7, 2017 letter met the requirements of Iowa Code § 20.32 contrary to the assertion made by Mr. Gorham and the City.

20.32 because he could not require the Department of Labor to provide written confirmation that receipt of federal funds was jeopardized. (App. 250-51). According to Mr. Lowe, it is not that section 20.32's application did not adequately ensure the continuation of bargaining rights, but rather, it was that there was no written confirmation that receipt of federal funds was jeopardized. As argued above, the City's position is disingenuous because the Iowa Director of Transportation had such written documentation and did, in fact, determine that receipt of federal funds was jeopardized despite this fact.

CONCLUSION

In sum, the Union urges the Court to affirm the decisions of the District Court and PERB in this matter. PERB applied the proper test to determine the substantive collective bargaining rights of a bargaining unit containing both transit and non-transit employees. PERB ascertained that there were transit employees in the bargaining unit. Once PERB ascertained that there were transit employees in the bargaining unit, PERB examined whether receipt of federal funds is jeopardized. PERB determined that receipt of federal funds is jeopardized by application of the HF 291 amendments to chapter 20. PERB's decision then applied section 20.32 to determine the substantive collective bargaining rights of the bargaining unit under sections 20.3(11) and 20.9(1). Upon examination of these provisions, PERB determined that the substantive collective bargaining rights, which are the same bargaining rights for a public safety bargaining with greater than thirty percent public safety employees as the unit in question has more than thirty percent transit employees, did not fully protect receipt of federal funds under 49 U.S.C. § 5333(b). In turn, PERB correctly applied section 20.27 in a limited manner to deem inoperative the offending provisions of section 20.9(1) as applied to the transit employees. PERB also correctly applied the provisions of section 20.27 to deem inoperative section 20.15, which does

not implicate the topics of the mandatory substantive collective bargaining rights contained in section 20.9(1), so as to ensure continued receipt of federal funds.

Respectfully Submitted,

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REQUEST FOR ORAL ARGUMENT

Intervenor, IUOE, Local 234 respectfully 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 12,504 words, excluding the parts of the Brief exempted by the rule.

2. This Brief complies with the typeface requirements of Iowa R. App. P. 6.9103(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, Jay M. Smith, hereby certify that on August 22, 2022, the foregoing Final Brief of Intervenor, IUOE, Local 234, 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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