STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF:	)	
AMALGAMATED TRANSIT UNION LOCALS 312, 441, 638, 779 AND 1192, Petitioners,	)	
and	)	CASE NO. 102202
STATE OF IOWA and DES MOINES AREA REGIONAL TRANSIT AUTHORITY, Intervenors.	)	

DECLARATORY ORDER

This matter is before the Public Employment Relations Board (PERB or Board) upon a petition filed July 3, 2018, by Amalgamated Transit Union Locals 312, 441, 638, 779, and 1192 (collectively ATU). The Board subsequently granted petitions for intervention filed by the State of Iowa and the Des Moines Area Regional Transit Authority (DART). The parties filed briefs and subsequently on September 13, 2018, presented oral arguments to the Board. Jay Smith and Robert Molofsky represented ATU, Matt Brick represented DART, and Jeff Edgar represented the State.

Each ATU local is certified by PERB to represent a bargaining unit of public employees employed as transit workers for public employer transit systems. These public employers all receive federal funding subject to the requirements of the Federal Transit Act (FTA). As a precondition for release of funds, the employers must have certain

protective arrangements in place to protect the collective bargaining rights of transit workers.

However, public employee collective bargaining rights substantially changed by the passage of 2017 Iowa Acts, House File 291 that amended Iowa Code chapter 20 and was effective February 17, 2017. One new requirement resulting from the amendments is mandatory retention and recertification elections of employee organizations. Several of the petitioning ATU locals are potentially subject to upcoming retention and recertification elections. ATU asserts the public employers' federal funding would be jeopardized if PERB conducted the retention and recertification elections for the ATU locals. With this backdrop, ATU filed its petition and seeks an order stating whether the application of Iowa Code section 20.27 exempts certain unions from the retention and recertification elections when federal funding is jeopardized.

Pending, at this time, are also ATU objections to PERB's intent to conduct retention and recertification elections for ATU Locals 441, 638, and 779.

I. Factual Background and Proceedings.

The certified ATU locals are as follows: ATU Local 312 for the City of Davenport public employee transit workers; ATU Local 441 for the DART public employee transit workers; ATU Local 638 for City of Cedar Rapids public employee transit workers; ATU Local 779 for the City of Sioux City Transit System public employee transit workers; and ATU

Local 1192 for the Metropolitan Transit Authority of Black Hawk County public employee transit workers.

Employers, such as the ones referenced, complete grant applications to receive FTA funding. The receipt of FTA funds (financial assistance) is subject to the U.S. Secretary of Labor's certification that the public employer has protective arrangements made on behalf of the transit employees that complies with federally mandated protections set forth in section 13(c) of the FTA now codified as 49 USC § 5333(b). The petitioners refer to these protective arrangements as "Section 13(c) agreements." The Department of Labor, Office of Labor-Management Standards (OLMS) is the federal agency responsible for ensuring the Section 13(c) agreements meet the federal requirements as a precondition to the release of federal funds to grantees.

Among other requirements, the protective arrangements must include provisions necessary for "the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise." 49 U.S.C. § 5333(b)(2)(A). Another mandated requirement is the "continuation of collective bargaining rights." 49 USC § 5333(b)(2)(B).

All five public employers, as recipients of these federal funds, are parties to Section 13(c) agreements with the respective ATU locals.[1] After

[1] The public employers are the City of Davenport, the Des Moines Regional Transit Authority, the City of Cedar Rapids, the City of Sioux City Transit System, and the Metropolitan Transit Authority of Black Hawk County

HF 291 amended Iowa Code chapter 20, ATU International, on behalf of ATU locals, objected to OLMS that the application of the chapter 20 amendments to the transit worker bargaining units conflicted with the requirements of 49 USC § 5333(b). Specifically, ATU asserted that the application of HF 291 to transit workers was inconsistent with the 49 U.S.C. § 5333(b)(2) requirement of the continuation of collective bargaining rights because the amended chapter 20 removes mandatory subjects of bargaining and prohibits bargaining over matters including subcontracting, dues check-offs, and the duration of the collective bargaining agreement.[2] ATU objected to multiple aspects of the retention and recertification elections as inconsistent with the 49 U.S.C. 5333(b)(2)(a) requirement to preserve the rights, privileges, and benefits under existing collective bargaining agreements, including that unions bear the cost of the election; the potential of immediate decertification; the effect of the existing collective agreement no longer being valid and binding; and construing employees who do not vote as a "no" vote for the retention and recertification of the union.

OLMS agreed with ATU's objections that the application of HF 291 chapter 20 amendments to public employee transit workers conflicted with the requirements of 49 USC § 5333(b),

> 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

[2] This particular conflict created by application of amended chapter 20 is not at issue in ATU's petition for a declaratory order.

> 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. For example, HF 291's removal of mandatory subjects from collective bargaining conflicts with the Recipient's obligation to continue collective bargaining rights.

U.S. Department of Labor's June 19, 2017, letter regarding City of Davenport Grants (IA-2017-010) and (IA-2017-011).

OLMS specifically addressed the conflict between 49 USC § 5333(b) requirements and the retention and recertification elections,

> In addition, HF 291's requirement that a retention and recertification election be held one year before the expiration of a collective bargaining agreement, and, the potential immediate voiding of the collective bargaining agreement, conflicts with the Recipient's obligation to preserve the rights, privileges, and benefits under existing collective bargaining agreements, as well as the obligation to continue collective bargaining rights. **As such, if HF 291 were applied to transit employees, the Secretary of Labor could not certify that fair and equitable arrangements exist to protect the rights of transit employees, thus jeopardizing the Recipient's ability to receive federal transit funds for which the Secretary of Labor's certification is required under 49 U.S.C. § 5333(b).**

Id. (Emphasis added.)

OLMS directed the parties to engage in good faith negotiations to reach a mutual agreement that resolved the compliance issues. The parties, relevant to this petition, successfully negotiated terms in a manner in which HF 291 did not conflict with 49 USC § 5333(b) obligations. The agreements explicitly invoked Iowa Code section 20.27 to deem HF 291 inoperative. The terms of the agreements were incorporated into OLMS' "U.S. Department of Labor 49 USC § 5333(b)

Certification[s]," which allowed the release of federal funds to the grantees, the above-referenced five employers.

The Section 13(c) agreements reached by the City of Davenport, the City of Cedar Rapids, and the City of Sioux City Transit System are identical. In accordance with Iowa Code section 20.27, the agreements provide HF 291 inoperative and thus inapplicable to transit employees covered under the protective arrangements and terms of the certification letters. The provisions of chapter 20 effective February 16, 2017, were deemed operative and applicable instead.

Metropolitan Transit Authority of Black Hawk County executed a separate Section 13(c) agreement with identical provisions. DART executed a separate Section 13(c) agreement that does not explicitly refer to HF 291, but in accordance with section 20.27, provides "any provision or provisions of the law that jeopardize federal funding shall be deemed inoperative and thus inapplicable to transit employees represented by ATU Local 441." DART's protective arrangements include its written assurances to maintain the existing collective bargaining agreement with ATU Local 441, effective July 1, 2016 to June 30, 2019, and to engage in collective bargaining with ATU Local 441 on any new collective bargaining agreement.

Question Posed.

> Does Iowa Code § 20.27 ("Conflict with federal aid") require an exemption from the retention and recertification elections mandated under Iowa Code § 20.15 (2), for unions with collective bargaining relationships with employers that

receive federal funds which are subject to Section 13(c) of the Federal Transit Act?

ATU asserts that, in accordance with Iowa Code section 20.27, these particular unions are exempted from the section 20.15(2) retention and recertification elections.

II. Should a Declaratory Order be Issued?

Pursuant to Iowa Code chapter 17A, PERB has jurisdiction to issue declaratory orders. "Any person may petition an agency for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the agency." Iowa Code § 17A.9(1)(*a*). However, Iowa Code section 17A.9 also provides that the Board may refuse or decline to issue a declaratory order when a petition has been filed. *See* Iowa Code § 17A.9(1) and (2). PERB subrule 621—10.9(1) sets forth grounds upon which the Board may refuse to issue an order. The enumerated grounds are as follow:

> 621—10.9(17A,20) Refusal to issue order.
> 10.9(1) The board shall not issue a declaratory order where prohibited by 1998 Iowa Acts, chapter 1022, section 13(1), and may refuse to issue a declaratory order on some or all questions raised for the following reasons:
> *a.* The petition does not substantially comply with rule 621—10.2(20).
> *b.* The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the board's failure to issue a declaratory order.
> *c.* The board does not have jurisdiction over the questions presented in the petition.
> *d.* The questions presented by the petition are also presented in a current rule-making, contested case or other agency or judicial proceeding that may definitively resolve them.

e. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.

f. The facts or questions presented in the petition are unclear, overbroad, insufficient or otherwise inappropriate as a basis upon which to issue a declaratory order.

g. There is no need to issue a declaratory order because the questions raised in the petition have been settled due to a change in circumstances.

h. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge an agency decision already made.

i. The petition requests a declaratory order that would necessarily determine the legal rights, duties or responsibilities of persons or entities who have not joined in the petition, intervened separately or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of the petitioner.

j. The petitioner requests the board to determine whether a statute is unconstitutional on its face.

DART argues PERB does not have jurisdiction to make a determination on the question posed because ATU Local 441 and DART's collective agreement provides for dispute resolution by the U.S. Department of Labor (DOL). DART asserts that DOL should make the final and binding determination on the enforcement and/or application of Iowa Code section 20.27 and urges PERB to refrain from issuing a declaratory order.

In accordance with chapter 17A, PERB has the authority to issue declaratory orders on the "applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the agency." The retention and recertification elections are within the primary jurisdiction of the agency. The Board has the power and is tasked with the duty to

administer chapter 20. *See* Iowa Code section 20.6(1). This includes the conduct of elections for initial certification, retention and recertification, and decertification of employee organizations. *See* Iowa Code § 20.15. For retention and recertification elections, the statute states "[t]he board shall conduct an election to retain and recertify the bargaining representative of a bargaining unit prior to the expiration of the bargaining unit's collective bargaining agreement." Iowa Code § 20.15(2).

Thus, the conduct of retention and recertification elections is within PERB's primary jurisdiction. Although it is within the province of DOL to determine compliance with 49 U.S.C. § 5333(b) if a retention and recertification election occurs, it is up to PERB to determine whether it will conduct the particular election. It is neither up to the parties or the DOL, as DART suggests, to make this determination on PERB's behalf. Accordingly, it is entirely appropriate for PERB to issue a declaratory on the application of Iowa Code sections 20.15(2) and 20.27 under the facts specified in ATU's petition.

Although not raised by DART, we questioned whether to issue a declaratory order because the question is overly broad and there were insufficient facts in the petition to make a determination. Both are enumerated grounds set forth in PERB subrule 621—10.9(1)*(f)*. The State also argues that the question is overly broad and, depending on how our order is crafted, has the potential of far-reaching implications for other

units with different circumstances that are not specified in the petition. We agree with the State. The facts are insufficient to make a determination on all "collective bargaining relationships with employers that receive federal funds which are subject to Section 13(c) of the Federal Transit Act."

Nonetheless, there are now sufficient facts to address the question with respect to these five ATU locals and the bargaining units they represent. During oral arguments, ATU clarified underlying facts to our questions with respect to these units. ATU unequivocally stated the five ATU-represented locals are comprised of 100 percent public employee transit workers. Additionally, ATU confirmed that the five public employers are "political subdivisions" pursuant to Iowa Code chapters 28E and 28M.

While ATU provided sufficient information to issue a declaratory order, we also considered the pending objections made by ATU Locals 441 (DART), 638 (Cedar Rapids), and 779 (Sioux City) and whether our determination on the objections was a more appropriate resolution. However, that would not resolve the issue for Locals 312 (Davenport) and 1192 (Blackhawk County) nor provide general guidance to parties. "Even if a ground for possible refusal to issue a declaratory order exists, it does not mean that we must refuse to answer". *In the Matter of United Elec., Radio & Machine Workers of Am.*, 17 PERB 100825 at 7 (IA PERB 06/29/2017), *aff'd, United Elec., Radio & Machine Workers*

of Am. v. Iowa Pub. Emp't Rel. Bd., No. CVCV054946, ____ WL _____ (Polk Cnty. Dist. Ct. 03/15/2018) (pending appeal, *United Elec., Radio & Machine Workers of Am.* v. *Iowa Pub. Emp't Rel. Bd.*, No. 18-0505). Consistent with facilitating and encouraging the issuance of agency advice, we issue our order directed to the five ATU locals. *Id.*

III. Analysis.

The threshold question is whether Iowa Code section 20.27 renders the provisions of Iowa Code section 20.15(2), requiring retention and recertification elections, inoperative for the five ATU locals. The section states,

> **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 to be inoperative.

Iowa Code section 20.27 was not amended by HF 291 and remains intact as it was before the chapter 20 amendments took effect on February 17, 2017. In our application of section 20.27 to the facts presented in the petition, it is unnecessary to engage in rules of statutory construction to ascertain the section's meaning. "[W]e only engage in statutory interpretation if the terms or meaning of the statute are ambiguous." *State v. McIver*, 858 N.W.2d 699, 703 (Iowa 2015). A statute's meaning is ambiguous if reasonable persons can disagree on its meaning." *Sierra Club Iowa Chapter v. Iowa Dep't of Transp.*, 832 N.W.2d

636, 644 (Iowa 2013). When a statute's terms are unambiguous and its meaning plain, there is no need to apply principles of statutory construction. *State of Iowa v. Caskey*, 539 N.W.2d 176 (Iowa 1995).

Iowa Code section 20.27 is unambiguous and its meaning plain—any provision of chapter 20 that jeopardizes federal funds is deemed inoperative. This provision of the statute evinces a clear legislative intent to preserve the receipt of federal funds by the State or any political subdivision. Section 20.27 provides no exceptions to a chapter 20 provision or provisions that shall be deemed inoperative. Any chapter 20 right, obligation, duty or otherwise is inapplicable to the extent the application of its particular provision in a given situation jeopardizes federal funding. Therefore, in adherence with section 20.27, when presented with facts that a certain provision of chapter 20 jeopardizes federal funding, it is incumbent upon us to deem the applicable provision inoperative.

Application of section 20.27.

The facts presented by the petition warrant the application of section 20.27. As an initial matter, the public employers in this case, the City of Davenport, the Des Moines Regional Transit Authority, the City of Cedar Rapids, the City of Sioux City Transit System, and the Metropolitan Transit Authority of Black Hawk County, are political subdivisions of the State.

Second, the facts presented demonstrate that application of statutory provisions on retention and recertification elections for the ATU locals would jeopardize the public employers' receipt of federal funds. The OLMS determined that section 20.15(2) retention and recertification elections for these five ATU locals would not comply with 49 U.S.C. § 5333(b) requirements. As OLMS stated in its June 19, 2017, letter, these elections "conflict[] with the Recipient's obligation to preserve the rights, privileges, and benefits under existing collective bargaining agreements, as well as the obligation to continue collective bargaining rights." As OLMS further stated, if applied to transit employees, the Secretary of Labor could not certify that fair and equitable arrangements existed and "thus jeopardizing the Recipient's ability to receive federal funds." In response to ATU's objections for these locals, the OLMS's statement is unequivocal.

Thus, these elections jeopardize the public employer's receipt of federal funding were they to be conducted. Under the facts presented in the petition, the retention and recertification requirements of section 20.15(2) are inoperative to these five ATU locals that represent 100 percent transit employees.

We reject out of hand DART's assertion that its due process rights would be violated in the absence of a retention and recertification election for ATU Local 441. Public employers do not have substantive rights in the election. Public employees have the right to choose their

exclusive representative and retain that right through certification or decertification elections.

Notice to PERB.

Currently, there is not a PERB administrative rule or other mechanism specifically allowing a party to notify the agency of circumstances when federal funding may be jeopardized by a chapter 20 provision. If the conduct of a retention and recertification election would jeopardize federal funding, such as the facts presented in this petition, a party must file an objection to the notice of intent to conduct an election pursuant to PERB subrule 621—5.6(3). This would allow PERB the opportunity to deem the applicable section 20.15(2) inoperative when presented with facts demonstrating federal funding would be jeopardized by the election.

ATU's pending objections will be resolved through the process outlined in subrule 621—5.6(3) and in light of our declaratory order.

DATED at Des Moines, Iowa this 21st day of September, 2018.

PUBLIC EMPLOYMENT RELATIONS BOARD

Jamie K. Van Fossen, Interim Chair

Mary T. Gannon, Board Member

Original filed EDMS.