STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF:	)	
CITY OF AMES, Petitioner, and	)	CASE NO. 102405
INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 234, and AFSCME IOWA COUNCIL 61, Intervenors.	)	

DECLARATORY ORDER

This matter is before the Public Employment Relations Board (PERB or Board) upon a petition filed January 17, 2020, by the City of Ames. The Board subsequently granted petitions for intervention filed by the International Union of Operating Engineers, Local 234 (IUOE), and AFSCME Iowa Council 61 (AFSCME). The Board's original schedule for the proceeding was delayed due to COVID-19. Thereafter, the City and IUOE filed briefs and subsequently on August 6, 2020, the three parties presented oral arguments to the Board. Aaron Hilligas represented the City and Jay Smith represented IUOE. Mark Hedberg represented AFSCME, which is the certified representative for transit employees in other bargaining units.

IUOE is certified by PERB to represent a bargaining unit (mixed unit or Blue-Collar Unit) of transit and non-transit employees employed by the City. For its public transit system, the City receives federal funding

administered by the Federal Transit Administration (FTA). As a condition to the City's receipt of federal funds, the City must have certain arrangements in place that protect the collective bargaining rights for the unit's transit employees.

When Iowa Code chapter 20 was amended by 2017 Iowa Acts, House File 291, the collective bargaining rights of all public employees were significantly altered. The impact to bargaining rights of transit employees jeopardized federal funding for public employer transit agencies in the State. Pursuant to Iowa Code section 20.27 and on an ad hoc basis, parties and PERB have deemed the amendments inoperative in whole or part for bargaining units comprised of all transit employees. However, the effect on a mixed unit of transit and non-transit employees is of first impression and gives rise to the City's petition and fourteen questions.

I. Factual Background and Questions.

On April 6, 1977, PERB certified IUOE as the exclusive bargaining representative for the mixed unit in PERB Case Nos. 919 & 922. Subsequently, the bargaining unit was amended in Case Nos. 994, 1550 & 1551, 4165, 4735, 5329, 6849, 7102, 7912, 8229, 8407, 8417, and 8528. The IUOE-represented unit is comprised of over thirty percent transit employees and the remaining unit employees are non-transit employees. On behalf of this unit, the City and IUOE are parties to a collective bargaining agreement effective July 1, 2019, through June 30, 2022.

The City is a public employer transit agency and completes a grant application to receive federal funding from the FTA, which provides financial and technical assistance to local public transit systems. As a condition to the receipt of funds, the City is required to have protective arrangements that comply with federally mandated protections pursuant to 42 U.S.C. § 5333(b) for its transit employees. The arrangements or labor protection agreement in place must provide "fair and equitable" protections to employees who may be affected by the grant. These arrangements are referred to as "Section 13(c) agreements or protections or protective arrangements." The applicable protections include, in part, an assurance that transit employees' rights, privileges, and benefits under existing collective bargaining agreements or otherwise are preserved and that there is a continuation of collective bargaining rights for them.

The United States Department of Labor, Office of Labor-Management Standards (DOL or OLMS) is the agency charged with determining whether parties have a Section 13(c) agreement that meets necessary prerequisites for the public employer transit agency's receipt of federal funds. Prior to certification, the DOL refers the grant application to interested parties, including labor unions that represent affected transit employees. The referring party may object if there are "changes in legal or factual circumstances that may materially affect the rights or interest of employees" or "material issues that may require alternative employee protections under 49 U.S.C. § 5333(b)." If the objection is sufficient, the

DOL will direct the parties to engage in good faith negotiations to resolve the underlying issues. If resolved and the DOL determines the parties' agreement satisfies the requirements of 49 U.S.C. § 5333(b), the DOL will issue a certification of compliance to the FTA (DOL certification or FTA Application CERTIFICATION).

Previously, the City and IUOE had a Section 13(c) Agreement, which provided protections for the IUOE-represented transit employees that met the requirements of 49 U.S.C. § 5333(b).[1] However, this changed when Iowa Code chapter 20 was amended with the passage of House File 291 on February 17, 2020 (HF 291 amendments or chapter 20 amendments).

Public employee collective bargaining rights were substantially impacted and diminished in respects by House File 291 amendments. The amendments required new mandatory retention and recertification elections of certified employee organizations and established a five-year maximum duration for collective bargaining agreements. The amendments identified a list of "public safety" employees and extended greater collective bargaining rights for units comprised of thirty percent or more public safety employees. PERB now characterizes and refers to a unit as a "public safety" or "non-public safety" unit based on its unit composition. In new section 20.32, public safety provisions were extended

1 The agreement, dated April 8, 1983, was supplemented by a March 3, 1995, letter from the Ames Transit Agency to the DOL. These agreements, along with a January 3, 2011 Uniform Protective Agreement, provided protections for IUOE-represented transit employees that met the requirements of 49 U.S.C. § 5333(b).

"on the same terms and to the same degree" to transit employees if "a public employer would lose federal funding under 49 U.S.C. §5333(b)."

For public-safety units, the Iowa Code section 20.9 mandatory subjects of bargaining were not materially changed by House File 291 amendments.[2] Dues checkoffs and various political payroll deductions, along with retirement systems, are now excluded subjects of bargaining for all units. For non-public safety units, the amendments to section 20.9 eliminated the former laundry list of eighteen mandatory subjects of bargaining and replaced it with the single mandatory subject of "base wages." Insurance, certain leaves of absence for political purposes, supplemental pay, transfer procedures, evaluation procedures, procedures for staff reduction, and subcontracting were added as excluded subjects of bargaining for non-public safety units. The House File 291 amendments to section 20.22 established new binding arbitration procedures, which differ for the two types of units. The public safety unit arbitration procedures remain substantially the same.[3] For non-public safety units, the arbitrator's award on base wage increases is limited to the lesser of the following percentages: three percent or the percentage equivalent to the increase in the consumer price index.

2 Dues checkoffs and various payroll deductions for political purposes are now excluded subjects of bargaining along with retirement systems.

3 We outline the differences in section 20.22 binding arbitration procedures in our response to Question 12.

To implement the changes, PERB adopted a substantial number of new and amended administrative rules. One such rule is PERB rule 621—6.40, "Public safety unit determination," which sets forth procedures to determine the public safety or non-public safety status of a unit. The rule applies to bargaining units which include at least one public safety employee or "as required by section 20.32 concerning certain transit employees."

After chapter 20 was amended, IUOE and the Amalgamated Transit Union filed an objection to the City's FTA grant application. They asserted House File 291's application to affected transit employees was incompatible with Section 13(c) protections. In response, the DOL directed the parties to negotiate a resolution. By letter dated April 25, 2017, to the DOL, the Iowa Department of Transportation (Iowa DOT) proposed a resolution whereby the parties could mutually agree to deem House File 291 provisions "inoperative" pursuant to Iowa Code section 20.27. This section deems inoperative any chapter 20 provision insofar as the provision jeopardizes "the receipt by the state or any of its political subdivisions of any federal grant-in-aid funds or federal allotment of money."

By letter dated June 7, 2017, the DOL issued an interim certification and concluded in part, "[A] Recipient's application of House File 291 to its transit employees, whether they are deemed public safety or public non-safety [SIC] employees, would render the Recipient unable to

comply with the requirements of 49 U.S.C. § 5333(b)(1) and (2)." For example, the "removal of mandatory subjects from collective bargaining conflicts with the Recipient's obligation to continue collective bargaining rights." As another, the DOL indicated the requirement of a retention and recertification election and its potential to void the collective bargaining agreement are a 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."

The DOL concurred with the Iowa DOT that Iowa Code section 20.27 provides an avenue for compliance with federal requirements. The DOL conditioned its interim certification on the application of Iowa Code section 20.27 to deem provisions of House File 291 inoperative and in lieu thereof "the provisions of Iowa Code [c]hapter 20 in effect on February 16, 2017, shall be deemed operative and applicable to said transit employees."

In their August 9, 2017, agreement sent to the DOL, the City and IUOE agreed in part:

> In accordance with Section 20.27 of Iowa Code Chapter 20, any provision or provisions of the law that jeopardize federal funding shall be deemed inoperative and thus inapplicable to transit employees represented by IUOE 234 who are covered under the parties' Section 13(c) protective agreements and the terms and conditions of the Department of Labor's certification letter(s), CyRide will maintain the existing collective bargaining agreement (cba) with IUOE 234, effective 7/1/16 through 6/30/19, in full force and effect; and upon its future cba expiration(s), engage in collective bargaining with IUOE 234 on any new collective bargaining or

> other agreements under the same conditions that existed prior to July 1, 2016, including the dispute resolution procedures.

On August 31, 2018, the parties executed a Memorandum of Understanding that the transit employees would not participate in or be impacted by an upcoming retention and recertification election of IUOE with respect to the mixed unit.

In its final certification issued in November 2017, the DOL again conditioned its certification on the application of Iowa Code section 20.27 to deem provisions of House File 291 inoperative in totality and in lieu thereof "the provisions of Iowa Code [c]hapter 20 in effect on February 16, 2017, shall be deemed operative and applicable to said transit employees."

Iowa Code section 20.27 was included in the original enactment of the Public Employment Relations Act, Iowa Code chapter 20. Since its enactment, section 20.27 has been utilized to assure transit employees retain collective bargaining rights as required by the DOL. Application of Iowa Code section 20.27 has resulted in continued receipt of federal transit funds to the State of Iowa and Iowa public transit agencies including the City of Ames.

Iowa Code section 20.32 applies public safety provisions to transit employees if the Iowa DOT director determines, with written confirmation from the DOL, that federal funding is jeopardized under 49 U.S.C. § 5333(b). However, section 20.32 fails to meet federal requirements and preserve funding for the applicable public employer. Additionally, the Iowa DOT director lacks authority to make the prerequisite determination. Iowa

Code section 20.32 has not been relied upon for the City's compliance with 49 U.S.C. § 5333(b).

In its petition requesting a declaratory order, the City posed fourteen questions related to Iowa Code sections 20.27 and 20.32 and the collective bargaining rights of the unit's transit and non-transit employees.

Questions Posed [SIC]:

> Question 1. (Petition "4(a)"). Do the provisions in Iowa Code Section 20.32 (2020) remain applicable and operative to the Blue-Collar bargaining unit's transit employees in light of the language in Iowa Code section 20.27 and OLMS' certification of a Section 13(c) Agreement that deemed the provisions of Iowa Code chapter 20 (2020) inoperative and inapplicable to the transit employees in the Blue-Collar unit?
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> Question 2. (Petition "4(b)"). If the provisions in Iowa Code section 20.32 (2020) remain applicable and operative to the transit employees in the City's Blue-Collar bargaining unit, has the language in section 20.32 treating the bargaining unit's transit employees as public safety employees been triggered? If so, how?
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> Question 3. (Petition "4(c)"). What is the Chapter 20 status of the non-transit employees who are included in the Blue-Collar unit with transit employees? (I.e., are the non-transit employees to be treated as transit employees, public safety employees, or non-public safety employees for the purposes of Iowa Code chapter 20 (2020)?)
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> Question 4. (Petition "4(d)"). How is the Chapter 20 status of the non-transit employees in the Blue-Collar unit determined?
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> Question 5. (Petition "4(e)"). Under what version of Iowa Code chapter 20 [i.e., Iowa Code chapter 20 (2016) vs. Iowa Code chapter 20 (2020)] is the City to bargain with the IUOE with respect to the non-transit employees in the Blue-Collar bargaining unit?
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> Question 6. (Petition "4(f)"). How do the retention and recertification election requirements specified in Iowa Code

section 20.15(2) (2020) apply to a bargaining unit that is not made up exclusively of transit employees?

Question 7. (Petition "4(g)"). If non-transit employees are required to vote in the retention and recertification election for the Blue-Collar unit, but the transit employees are not required to do so in light of the Section 13(c) Agreement applicable to the transit employees, what is the status of the Blue Collar unit if the non-transit employees do not recertify IUOE as the representative of the Blue Collar unit?

Question 8. (Petition "4(h)"). If non-transit employees are required to vote in the retention and recertification election for the Blue-Collar unit, but the transit employees are not required to do so in light of the Section 13(c) agreement applicable to the transit employees, what is the status of an existing collective bargaining agreement if the non-transit employees do not recertify IUOE as the representative of the Blue Collar unit?

Question 9. (Petition "4(i)"). What are the requirements for an employer to bargain in good faith with the Union representing the employees in the Blue-Collar bargaining unit that includes transit employees [for which the provisions of Chapter 20 (2020) have been deemed inapplicable and inoperative in the Section 13(c) Agreement certified by OLMS] and non-transit employees? (E.g., bargain separate collective bargaining agreements, bargain a single agreement under Chapter 20 (2020) applicable to the entire unit with a separate section negotiated under Chapter 20 (2016) only for the transit employees, etc.)

Question 10. (Petition "4(j)"). Is the form of a collective bargaining agreement to be negotiated with respect to the Blue-Collar unit with both transit and non-transit employees a permissive subject of bargaining? If so, what form of agreement would be the default if the parties cannot voluntarily agree?

Question 11. (Petition "4(k)"). What is the maximum duration of a collective bargaining agreement related to the non-transit employees in the Blue-Collar unit?

Question 12. (Petition "4(l)"). How do the binding interest arbitration procedures in Iowa Code section 20.22 operate for the Blue-Collar bargaining unit that includes both

transit [for which the provisions of Chapter 20 (2020) have been deemed inapplicable and inoperative in the Section 13(c) Agreement certified by OLMS] and non-transit employees?

Question 13. (Petition "4(m)"). How do PERB's administrative rules apply to the Blue-Collar bargaining unit that includes both transit [for which the provisions of Chapter 20 (2020) have been deemed inapplicable and inoperative in the Section 13(c) Agreement certified by OLMS] and non-transit employees?

Question 14. (Petition "4(n)"). Is it necessary for the City and IUOE (or by PERB *sua sponte*) to seek separate bargaining units for the transit and non-transit employees?

II. Should a Declaratory Order be Issued?

In its petition for intervention, IUOE asserts PERB should decline to issue a declaratory order because the questions presented would be more properly resolved in a different type of proceeding; and 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. *See* Iowa Admin. Code rs. 621—10.9(1)(*e*) and 621—10.9(1)(*f*). Additionally, IUOE argues the Board should specifically decline to issue a declaratory order concerning Questions 7 ("4(g)"); 8 ("4(h)"); 9 ("4(i)"); 12 ("4(l)"); and 13 ("4(m)") because they are based on the premise that a single bargaining unit can be subjected to "different bargaining regimes."

PERB rule 621—10.9 provides, in relevant part:

621—10.9(17A,20) Refusal to issue order.

10.9(1) The board shall not issue a declaratory order where prohibited by Iowa Code section 17A.9(1)"b"(2) and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

. . . .

> *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.

Iowa Admin. Code r. 621—10.9.

IUOE and AFSCME argue for uniform bargaining rights within the unit rather than different inter-unit bargaining regimes. While this goes to the merits, it is not a sufficient basis for our refusal to answer certain anticipatory questions posed. The questions relate to retention and recertification elections, the parties' contract, binding arbitration, and PERB administrative rules. They form an appropriate basis for our order to provide clarity for the parties' future planning under all possible circumstances. For this same reason, we are not persuaded the questions would more properly be resolved in a different proceeding or by a different body. As the City points out, the parties had agreed the declaratory order proceeding is the appropriate proceeding to obtain determinations and clarification, which will assist the parties with their future planning.

With two exceptions, we disagree with IUOE's assertions that the questions posed are unclear, overbroad, insufficient, or otherwise inappropriate. The parties provided clarifying information during oral arguments and in their briefs. Additionally, the facts are undisputed. However, we agree that Question 4 ("4(d)") and Question 9 ("4(i)") are overly broad. Question 4 inquires as to how the chapter 20 status of non-transit employees is determined. The parties can clearly see how that

determination is made by our analysis of Question 3, which poses the inquiry, "What is the chapter 20 status or bargaining rights of the non-transit employees?" Question 9 inquires as to the City's obligation to bargain in good faith with respect to this unit. The duty to bargain in good faith is examined on a case-by-case basis with consideration of the underlying facts and circumstances in each. *See, e.g., United Elect., Radio & Mach. Workers of Am., Local 896 & State (Bd. of Regents)*, 2019 PERB 100800 & 100814 at 17. It would be impossible to adequately address what constitutes good faith in every imaginable scenario of facts and circumstances underlying bargaining for this unit. To the extent this question relates to a single or separate collective bargaining agreements required for the unit, we provide guidance in our response to Question 10.

For these reasons, we conclude Questions 4 and 9 are overly broad. We decline to issue declaratory orders on these questions. The remaining questions are appropriate inquiries posed for a declaratory order.

III. Analysis.

Question 1. (4(a)).

The petition poses the first question concerning the application of Iowa Code section 20.32 to the unit's transit employees. All parties agree the application of section 20.32 to the transit employees jeopardizes the City's receipt of federal funds. As they assert, the DOL concluded the treatment of transit employees as public safety employees pursuant to Iowa Code section 20.32 does not meet the requirements of 49 U.S.C. §

5333. The parties maintain, consistent with the Section 13(c) Agreement and DOL certification, section 20.27 is applicable instead. Accordingly, they state all of House File 291 amendments, including section 20.32, are inoperative to the transit employees.[4]

Thus, we must determine whether section 20.32 applies to the transit employees when its fails to preserve federal funding, but alternatively, section 20.27 fulfills this purpose. As an initial premise to our analysis, we note the parties' Section 13(c) Agreement and DOL certification are not determinative of state collective bargaining rights, including application of section 20.32 to the transit employees. In interpreting Section 13(c) agreements, the federal courts have been clear that state law governs the collective bargaining between local government entities and the unions representing their employees.[5] *See City of Colorado Springs v. Solis*, 589 F.3d 1121, 1133 (10th Cir. 2009). Section 13(c) merely governs a state's right to funding. *Amalgamated Transit Union Int'l, AFL-CIO v. Donovan*, 767 F.2d 939, 944 (D.C. Cir. 1985). States are

4 IUOE raises alternative positions, which address our treatment of the entire unit and are not limited to the specific question posed about the application of section 20.32 to only the unit's transit employees. We address the non-transit employees and IUOE's assertions in our response to Question 3.

5 Congress did not intend to create a body of federal law (Section 13(c) of the Urban Mass Transportation Act of 1964) to supersede state labor relations law. *See Jackson Transit Auth. v. Local Div. 1285, Amalgamated*, 457 U.S. 15, 27 (1982). The Urban Mass Transportation Act of 1964 was enacted to further "the interest of the United States … to foster the development and revitalization of public transportation systems." 49 U.S.C. § 5301(a). The purposes of the Act are to "provide funding to support public transportation" and "promote the development of the public transportation workforce," among other things. 49 U.S.C. § § 5301(b)(1) and (8).

free to forego such federal assistance and thus to adopt any collective bargaining scheme they desire. *Id.* at 948.

Under our state collective bargaining law, both sections 20.27 and 20.32 provide provisional measures to preserve federal funding that may otherwise be jeopardized for a public employer. The more generalized provision, section 20.27, was included in the original enactment of the Public Employment Relations Act. *See* 1974 Iowa Acts ch. 1095, § 28. Since its enactment, section 20.27 has been utilized to ensure transit employees retain collective bargaining rights as required by the DOL. The second provision, section 20.32, was added in 2017 and is specific to transit employees and to federal funding requirements of 49 U.S.C. § 5333. Iowa Code sections 20.27 and 20.32 provide:

> **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.
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> **20.32 Transit employees – applicability.**
> All provisions of this chapter applicable to employees described in section 20.3., subsection 11 shall be applicable on the same terms and to the same degree to any transit employee if it is determined by the director of the department of transportation, upon written confirmation from the United States department of labor, that a public employer would lose funding under 49 U.S.C. § 5333(b) if the transit employee is not covered under certain collective bargaining rights.

Iowa Code §§ 20.27, 20.32 (2019).

We follow the principles of statutory interpretation for guidance on the application of section 20.32 and section 20.27 to the transit employees.

In our analysis, our goal is to give effect to the intent of the legislature. *See Auen v. Alcoholic Beverages Div.*, 679 N.W.2d 586, 590 (Iowa 2004). We determine legislative intent from the words chosen by the legislature, not what it should or might have said. *Schadendorf v. Snap-On Tools Corp.*, 757 N.W.2d 330, 337 (Iowa 2008). Rules of statutory construction are to be applied only when the explicit terms of a statute are ambiguous. *Carolan v. Hill*, 553 N.W.2d 882, 887 (Iowa 1996). A statute is ambiguous if reasonable minds could differ or be uncertain as to the meaning of the statute. *Mall Real Estate, L.L.C. v. City of Hamburg*, 818 N.W.2d 190, 198 (Iowa 2012). When the meaning of a statute contains no ambiguity, "the statute will be applied in accordance with its plain meaning." *Citizens Aide/Ombudsman v. Miller*, 543 N.W.2d 899, 902 (Iowa 1996). At the same time, the Court will avoid literal application of an unambiguous statute that produces absurd and unjust results. *See Braake v. Iowa Dep't of Natural Res.*, 897 N.W.2d 522, 540 (Iowa 2017).

When we examine the provisions at hand, the language of sections 20.27 and 20.32 is plain and unambiguous. Each section reflects clear legislative intent to preserve federal funding with provisional measures to fulfill this primary goal. The difference lies in the effectiveness of their provisional measures.

Section 20.27 broadly deems any chapter 20 provision inoperative if its application jeopardizes federal funding. The provisional measure is

unequivocal in fulfilling the section's sole purpose. In a previous analysis, we indicated,

> 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 [] jeopardizes federal funding.

Amalgamated Transit Union Locals 312, 441, 638, 779 and 1192 & State of Iowa, 2018 PERB 102202 at 12. Through unequivocal provisional measures, the legislature made it clear that the receipt of federal funds for the state and its political subdivisions is a priority higher than any other chapter 20 provision or legislative prerogative. In this case, the measure effectively preserves FTA funds jeopardized by HF 291 amendments.

Section 20.32 is more specific and provides a provisional measure when "a public employer would lose funding under 49 U.S.C. § 5333(b) if the transit employee is not covered under certain collective bargaining rights." This newly added chapter 20 section targets the preservation of federal funds tied to DOL requirements for transit employees. To achieve this purpose the provisional measure is straightforward and requires transit employees to be treated as public safety employees. Unlike section 20.27, however, we discern other legislative interests inherent in section 20.32.

By putting transit employees on equal footing with public safety employees, the legislature allowed transit employees to have greater bargaining rights when necessary to preserve federal funding. At the same

time, the legislature limited the transit employees' bargaining rights to "the same terms and to the same degree" applicable to the public safety employees. Accordingly, the transit employees' bargaining rights are determined in the same manner as public safety employees. The legislature did not segregate public safety employees for the purposes of collective bargaining. Rather, the legislature established bargaining rights on a unit basis to avoid the practical problems with different inter-unit collective bargaining. *See AFSCME Iowa Council 61 v. State of Iowa*, 928 N.W.2d 21, 39 (Iowa 2019).

Effectively through section 20.32, the legislature limited transit employees, like public safety employees, to a public safety unit or non-public safety unit based on the thirty percent threshold. This threshold reflects the legislature's balance of interests. We reasonably infer these legislative interests embodied in section 20.32 as secondary to the primary goal of preserving federal funding tied to transit employees.

While section 20.32 is clear and unambiguous, it fails to meet federal requirements and fulfill the legislature's primary goal. As the DOL concluded, the transit employees' treatment as non-public safety or public safety employees pursuant to section 20.32 "would render the [City] unable to comply with the requirements of 49 U.S.C. § 5333(b)(1) and (2)." The removal of mandatory subjects from collective bargaining conflicts with the Recipient's obligation to continue collective bargaining rights. Additionally, the transit employees and their representatives would be

subject to retention and recertification elections, which the DOL specifically cited as a conflict with 49 U.S.C. § 5333 requirements. Because the provisional measure of section 20.32 fails to meet 49 U.S.C. § 5333 requirements as intended, it is unnecessary to examine the impossibility of its triggering mechanism.

Thus, on the one hand we are confronted with the literal application of section 20.32 that defeats the legislature's clear and primary goal of preserving federal funding. Its ineffective provisional measure is clearly not the result intended by the legislature. On the other hand, section 20.27 provides a clear alternative and unequivocal application to preserve the receipt of federal funding related to transit employees.

In reconciling issues related to the application of sections 20.27 and 20.32, we strive to effectuate legislative intent. The legislature's primary goal is to preserve federal funding for public employers. As reflected in section 20.27, this goal is unequivocal over all other chapter 20 legislative prerogatives. Consequently, we agree with the parties that section 20.27 applies to the transit employees to meet 49 U.S.C. § 5333 requirements and preserve federal funds for public employers. Section 20.32 does not apply to the transit employees because it fails to preserve funding as the legislature intended. This construction of the two sections is reasonable to avoid the absurd and unjust results produced by the literal application of section 20.32.

We are mindful this interpretation creates a de facto set of bargaining rights, which the legislature avoided for both public safety and transit employees when it amended chapter 20. *See id.* We also recognize legislative intent to restrict bargaining rights for all public employees. However, on balance, the consequence of the de facto bargaining rights for transit employees is outweighed by the legislature's primary goal of preserving the receipt of federal funds for public employers in this state. Our interpretation of the sections honors this goal.

To avoid absurd and unjust results from its literal application, section 20.32 does not apply to the transit employees. Based on the facts presented, the application of Iowa Code section 20.27 is warranted to deem all House File 291 amendments inapplicable and inoperative to transit employees. Therefore, as the parties had agreed, the statute applicable to the transit employees is Iowa Code chapter 20 in effect as of February 16, 2017.

Question 2. (4(b)).

The second question posed inquires how Iowa Code section 20.32 is triggered if applicable to the transit employees. Provisions of Iowa Code section 20.32 are not applicable to unit transit employees for the reasons discussed in response to Question 1 "(4(a))."

Question 3. (4(c)).

The question posed as "4(c)" inquires as to the chapter 20 status of the non-transit employees who are included in the unit along with transit

employees. The petition specifically asks whether the non-transit employees are treated as public safety employees, transit employees or non-public safety employees. Thus, the issue is whether the non-transit employees, pursuant to section 20.27, have the de facto bargaining rights extended to transit employees; or whether, pursuant to section 20.32, they have bargaining rights extended to public safety employees based on unit composition of transit employees; or whether they have bargaining rights extended to non-public safety units regardless of their unit mix.

IUOE and AFSCME assert the legislature established bargaining rights on a unit basis. Therefore, they maintain the non-transit employees share the same de facto bargaining rights extended to their fellow unit transit employees pursuant to Iowa Code section 20.27. Alternatively, they assert section 20.32 is applicable and extends bargaining rights based on unit composition of transit employees. Because there are more than 30 percent transit employees in the unit, they contend the non-transit employees have the bargaining rights extended to public safety units as set out in section 20.9, "Scope of negotiations," and section 20.22, "Binding arbitration."

The City asserts neither section 20.27 nor section 20.32 applies to the non-transit employees to determine their bargaining rights. The City argues 13(c) protections and DOL certification are intended only for transit employees. Thus, the City claims section 20.27 does not apply to extend the transit employees' de facto bargaining rights to the non-transit

employees. The City maintains section 20.32 does not apply to the non-transit employees either. The City argues this makes section 20.32 operative and applicable to the transit employees contrary to the DOL's certification. Additionally, the City alleges the prerequisite determination cannot be made to trigger the application of section 20.32 to the non-transit employees. The City concludes the non-transit employees should have bargaining rights extended to non-public safety units.

In determining what bargaining rights and procedures extend to non-transit employees, we follow the principles of statutory interpretation we set out for the first question posed. As a first step, we determine if the statutory provision is ambiguous. "A statute is ambiguous if reasonable minds could differ or be uncertain as to the meaning of the statute." *Sherwin-Williams Co. v. Iowa Dep't of Revenue*, 789 N.W.2d 417, 424 (Iowa 2010). Ambiguity may arise upon examination of all the statute's provisions together in context. *Holstein Elec. v. Breyfogle*, 756 N.W.2d 812, 815 (Iowa 2008). "Even if the meaning of the words might seem clear on their fact, their context can create ambiguity." *Iowa Ins. Institute v. Core Group of Iowa Ass'n for Justice*, 867 N.W.2d 58, 72 (Iowa 2015). When the meaning of the statute is ambiguous, we may consider rules of statutory construction in our interpretive analysis. *Holstein Elec.,* 756 N.W.2d at 815.

We assess the statute in its entirety rather than isolated words or phrases to ensure our interpretation is harmonious with the statute as a

whole. *Schadendorf*, 757 N.W.2d at 337. Because we presume the legislature included every part of the statute for a purpose, we avoid construing a statutory provision in a manner that would make any portion thereof redundant or irrelevant. *Rojas v. Pine Ridge Farms, L.L.C.*, 779 N.W.2d 223, 231 (Iowa 2010). We also avoid construing statutory provisions in a manner that will lead to absurd results. *Iowa Ins. Inst. v. Core Group of Iowa Ass'n for Justice*, 876 N.W.2d 58, 65, 77 (Iowa 2015).

In this case, an ambiguity arises when we examine all relevant chapter 20 provisions in their entirety to determine the non-transit employees' bargaining rights. Because non-transit employees are not specifically referenced in chapter 20, reasonable minds can differ as to the appropriate section that is determinative of their bargaining rights. Such is the case here as demonstrated by the parties' various positions. Given the ambiguity, we follow the rules of statutory construction in our interpretive analysis.

Before examining sections 20.27 and 20.32, we begin our analysis with a review of legislative intent. The House File 291 amendments are illuminating as to legislative prerogatives, which we strive to effectuate in our construction. The legislature plainly intended to restrict bargaining rights for public employees. At the same time, it intended to preserve bargaining rights for public safety employees. The legislature balanced these two interests by establishing bargaining rights on a unit basis and thirty percent threshold of public safety employees. While this extends

greater bargaining rights to some non-public safety employees, it maintains consistency of bargaining rights within a unit. Section 20.32 reflects similar legislative interests for transit employees. Therefore, we consider this delicate balance of the legislature's interests in our analysis of the non-transit employees' chapter 20 bargaining rights.

Given our conclusions with respect to transit employees, we first examine whether section 20.27 also applies to the unit's non-transit employees. The most compelling reason for its application is to maintain bargaining rights on a unit basis as the legislature intended. We balance that interest with the legislature's goal to restrict bargaining rights. Ultimately, the balance is upset with the creation of de facto bargaining rights for transit employees. Nonetheless, the resulting de facto bargaining rights for transit employees are warranted to preserve federal funding.

The same cannot be said for non-transit employees. Section 20.27 applies "insofar as the fund is jeopardized." The facts presented by the petition indicate the FTA funding is tied to 13(c) protections for transit employees only; federal funding is not tied to collective bargaining protections for the unit or its non-transit employees. Thus, federal funds are not jeopardized to warrant the application of section 20.27 and extend a de facto set of bargaining rights to the non-transit unit employees.

Next, we examine section 20.32 to determine its application to the non-transit employees. Pursuant to the section, provisions applicable to

public safety employees apply to transit employees "on the same terms and to the same degree." Accordingly, like public safety employees, the legislature seemingly intended the transit employees' composition to determine the unit's public safety status and applicable bargaining rights. The question is whether section 20.32 still applies to the non-transit employees when it is ineffective and inapplicable to transit employees of the same unit.

We disagree with the City's assertion that its application to non-transit employees is precluded by the DOL certification. For one, the state collective bargaining law, Iowa Code chapter 20, governs the non-transit employees' bargaining rights rather than the parties' 13(c) Agreement and DOL certification. *See City of Colorado*, 589 F.3d at 1133. Further, section 20.32 does not apply to the transit employees regardless of its application for the rest of the unit. For reasons previously outlined, the transit employees' bargaining rights are distinct from the unit and remain unaffected by the non-transit employees' bargaining rights.

To this same end, the fact that transit employees are extended greater bargaining rights than all other public employees should not be at the demise of non-transit employees. The bargaining rights of all other public employees are based on unit composition of public safety employees. Non-public employees have bargaining rights extended to public safety units when unit composition meets the thirty percent threshold. It would be unreasonable to construe non-transit employees'

bargaining rights in a different manner that denied them bargaining rights based on their unit's composition of transit employees as section 20.32 requires.

We are not persuaded by the City's assertion that the application of section 20.32 would extend greater bargaining rights to the non-transit employees than the legislature intended. In our analysis of section 20.32, we identified several inherent legislative prerogatives secondary to the goal of preserving the receipt of federal funds. One such prerogative embodied in the section is the extension of greater bargaining rights to transit units and thus, non-transit employees when unit composition reaches the legislatively determined thirty percent threshold. This reflects the balance of other legislative interests in restricting bargaining rights, maintaining consistent bargaining rights within a unit, and putting the transit units on equal footing with all other public employee bargaining units. We presume the legislature intended every part of the statute for a purpose and the City's construction would render section 20.32 irrelevant. *See Roja*, 779 N.W.2d at 231.

A reasonable interpretation of section 20.32 warrants its application to non-transit employees to determine their bargaining rights. Like other public employees, the non-transit employees have greater bargaining rights if the unit composition of transit employees meets the thirty percent threshold. This interpretation most closely aligns with the delicate balance of what the legislature sought to achieve. A construction which carte

blanche deems non-public safety status, or for that matter public safety status, to all non-transit employees ignores the thirty percent threshold. The legislature chose this threshold as the determining factor for bargaining rights. *See, e.g., AFSCME Iowa Council 61*, 928 N.W.2d at 39 (It is not the court's role to redraw the legislature's chosen thirty percent threshold). Our interpretation makes sense in considering this balance and fulfilling legislative intent as closely as possible under the circumstances.

We are not persuaded that the application of section 20.32 is precluded in its entirety by the unforeseen impossibility of the triggering mechanism. It is abundantly clear from the facts presented that federal funding is jeopardized. It would be absurd to construe section 20.32 in a fashion to require an impossible showing. It is sufficient that the heart of the requirement, the establishment or verification of jeopardized federal funds, is met through the DOL's certification.

In summary, Iowa Code section 20.27 does not provide authority to deem chapter 20 provisions inoperative to the non-transit employees. After consideration of the totality of the amended statute and the balancing of the legislative goals, we conclude the bargaining rights of non-transit employees are determined by their unit composition of transit employees pursuant to section 20.32. Non-transit employees who are included in units comprised of thirty percent or more transit employees are in a public

safety unit with corresponding bargaining rights. All others are included in non-public safety units with applicable bargaining rights.

Question 5. (4(e)).

The fifth question posed inquires as to the appropriate chapter 20 version applicable to collective bargaining between the City and IUOE. As previously set out, we concur with the parties' agreement that the applicable statute for the transit employees is Iowa Code chapter 20 in effect on February 16, 2017. For non-transit employees, the current Iowa Code chapter 20 applies.

Question 6. (4(f)).

Question 6 inquires as to the retention and recertification election requirements for a mixed unit of transit and non-transit employees.

The retention and recertification elections specified in Iowa Code section 20.15(2) apply to both public safety and non-public safety units and their certified bargaining representatives. *See* Iowa Code § 20.15(2) (2019). Without condition, the DOL indicated these elections fail protections required for transit employees pursuant to 49 U.S.C. § 5333. In accordance with our conclusion for Question 1, all House File 291 amendments to Iowa Code chapter 20 are deemed inoperative and inapplicable to transit employees within a bargaining unit. This includes Iowa Code section 20.15(2) provisions. Thus, the transit employees do not participate in retention and recertification elections and they are not included as eligible voters of the unit for those elections.

All non-transit employees participate in the retention and recertification elections. The non-transit employees constitute the eligible voters for all election purposes including but not limited to the majority vote required for retention of the employee organization as the certified representative for collective bargaining purposes. *See* Iowa Code § 20.15(2) and Iowa Admin. Code Ch. 621—15. The election fee is calculated based on the non-transit employees who constitute eligible voters. Should the certified employee organization fail to pay the election fee as required, PERB will revoke its certification as the exclusive representative of the non-transit employees. The employee organization will remain certified to represent the transit employees in the unit. The effect of a less than a majority vote is similar and we discuss this outcome in our response to Question 7.

Question 7. (4(g)).

Question 7 inquires as to the effect of a less than majority vote by the unit's non-transit employees for the retention of its certified employee organization as the exclusive representative of the unit. A certified employee organization is subject to Iowa Code section 20.15(2) retention and recertification requirements with respect to only the non-transit employees. In the event of a less than majority vote for retention, the employee organization will be decertified as the exclusive representative for all non-transit employees included in the unit. The employee

organization will remain certified to represent the transit employees in the unit.

Question 8. (4(h))

The eighth question posed inquires as to the status of the parties' collective bargaining agreement in the event the non-transit employees do not vote to retain the certified employee organization. We have previously determined that our decertification of an employee organization renders the applicable collective bargaining agreement ineffective or the decertification effectively terminates the contract. *See AFSCME & Howard Cnty.*, 1985 PERB 2462 at 12; *Iowa United Prof'ls & State*, 1983 PERB 2442 at 7. We are reluctant to impose a contract on employees who just voted to decertify a union that bargained the contract. *Iowa United Prof'ls*, 1983 PERB 2442 at 5. Our decisions on this subject were well before the chapter 20 amendments added the requirement of retention and recertification elections.

In the advent of mixed units of transit employees and non-transit employees, it is now possible for a certified employee organization to be decertified or have its certification revoked as to only part of the unit. In this instance, the provisions of a collective bargaining agreement covering the entire unit are ineffective or effectively terminated to the extent they address the non-transit employees. If there are separate collective bargaining agreements for unit employees, only the contract for the non-transit employees is deemed ineffective or it is effectively terminated.

Question 10. (4(j)).

The question posed inquires as to whether the unit's collective bargaining agreement form, *i.e.*, a singular contract or separate contracts, is a permissive subject of bargaining. Based on the foregoing analysis, we conclude the form of a collective bargaining agreement is a permissive subject of bargaining.

Subjects of bargaining are divided into three categories: (1) mandatory subjects listed in Iowa Code section 20.9 on which bargaining is required if requested; (2) permissive subjects on which bargaining is permitted, but not required ("other matters mutually agreed upon"); and (3) what was "illegal," but are now referenced as "excluded" subjects, which are excluded by law from negotiations. *See* Iowa Code § 20.9 (2019). *See also, e.g., City of Clinton and AFSCME Local #888*, 2015 PERB 100011. A proposal's negotiability status is significant because only mandatory subjects of bargaining may proceed through statutory impasse procedures to binding arbitration, unless the parties agree otherwise. *Waterloo Educ. Ass'n v. Iowa Pub. Emp't Rel. Bd.*, 740 N.W.2d 418, 421-22 (Iowa 2007) (*Waterloo II*).

When determining whether a proposal is a mandatory subject of bargaining, PERB uses the two-pronged approach set forth in *State v. PERB*, 508 N.W.2d 668 (Iowa 1993), and *Northeast Cmty. Sch. Dist. v. PERB*, 408 N.W. 46 (Iowa 1987), and endorsed by the Court in *Waterloo II*. First, the Board engages in a definitional exercise to determine whether

the proposal fits within the scope of a specific [mandatorily negotiable] subject listed in Iowa Code section 20.9. *Waterloo II,* 740 N.W.2d at 429. If this test is met, the next inquiry is whether the proposal is preempted or inconsistent with any provision of law. *Id.* Ordinarily, this two-step process resolves the question of negotiability. *Id.*

PERB looks only at the subject matter of a proposal and not its merits. *Charles City Cmty. Sch. Dist. v. PERB*, 275 N.W.2d 766, 769 (Iowa 1979). It is not for PERB to rewrite the proposals at issue. Consequently, the Board takes caution to read proposals literally. *Clinton Police Dep't Bargaining Unit v. PERB*, 397 N.W.2d 764, 766 (Iowa 1986). PERB must decide whether a proposal, on its face, fits within the definition of a section 20.9 mandatory bargaining subject. *Waterloo II,* 740 N.W.2d at 429. To make that determination, PERB cannot merely search for a topical word listed in section 20.9. *State*, 508 N.W.2d at 675. Rather, PERB must look to what the proposal, if incorporated through arbitration into the collective bargaining agreement, would bind an employer to do. *See id.* at 673; *Charles City Cmty. Sch. Dist.,* 275 N.W.2d at 774. The answer to this inquiry reveals the subject, scope, or predominant characteristic or purpose of the proposal. *See Waterloo II,* 740 N.W.2d at 427; *State,* 508 N.W.2d at 673. If the proposal's subject, scope, or predominant characteristic is not within a mandatorily negotiable section 20.9 category, and the proposal is not excluded from the scope of bargaining, it is a permissive subject upon which the parties may agree to negotiate.

The question posed inquires as to the section 20.9 bargaining status of the form of a collective bargaining agreement for a mixed unit of transit and non-transit employees. By form, the City means whether the parties negotiate a single contract for the unit or separate contracts, *i.e.*, one for the transit employees and one for the non-transit employees. A proposal, which requires the parties to negotiate a single collective bargaining agreement or separate collective bargaining agreements, is not a matter that falls squarely within any mandatorily section 20.9 subject of bargaining under the current chapter 20 or chapter 20 in effect as of February 16, 2017. *See* Iowa Code §§ 20.9 (2017) (2019). Nor is it an illegal or excluded subject of bargaining. It is therefore a permissive subject of bargaining.

The follow-up question posed inquires as to whether Iowa Code chapter 20 requires a single contract for the unit or separate contracts in the absence of the parties' agreement. All the parties assert chapter 20 requires parties to negotiate a single collective bargaining agreement for a unit. The City adds, that for operational efficiency, the parties should negotiate one contract in the absence of their agreement otherwise.

We previously addressed similar questions concerning other permissive subjects of bargaining, such as contract duration, re-openers, and automatic renewals, when the parties were unable to agree on those terms. As with the permissive subject at issue here, chapter 20 is not explicit in its requirements for those particular contract terms. In these

cases, we reviewed relevant statutory provisions to determine implicit chapter 20 requirements regarding contract terms. *See, e.g., Tri-Center Cmty. Sch. Dist. & Tri-Center Educ. Ass'n*, 1981 PERB 1918; *Waukee Cmty. Sch. Dist. & Waukee Educ. Ass'n*, 1979 PERB 1455; *Southeast Polk Cmty. Sch. Dist. & Southeast Polk Educ. Ass'n*, 1979 PERB 1423 & 1428.

For instance, we concluded chapter 20 contemplates a one-year contract duration when the timing of statutory impasse procedures is based on the employer's certified annual budget date and bargaining procedures imply fiscal year bargaining. *See Benton Cnty. & Local Union 2003, Int'l Bhd. Of Painters and Allied Trades*, 1982 PERB 2180 & 2182. We also noted the parties may agree to another duration; variance is not prohibited by chapter 20. *Id.* at 2.

Following similar reasoning, chapter 20 bargaining procedures and timelines lead us to conclude the statute contemplates a single collective bargaining agreement per unit. Beginning with bargaining "procedures" set out in Iowa Code section 20.17, references are to a single collective bargaining agreement. Section 20.17(4) requires public notice of "terms of *a* collective bargaining agreement" prior to a ratification election; section 20.17(6) outlines the validity of "[*a*] collective bargaining agreement"; and sections 20.17(8), (9), and (10) set timelines for the negotiation of "*a* proposed collective bargaining agreement". *See* Iowa Code §§ 20.17(4), (6), (8), (9), and (10) (2017) (2019) (emphasis added). Other chapter 20 provisions also refer to a single collective bargaining agreement with

respect to the parties' independent impasse procedures and mediation. *See id.* §§ 20.19 and 20.20 (2017) (2019). In totality, the negotiation and impasse process is geared towards the parties' completion of a single collective bargaining agreement.

Another compelling reason for concluding chapter 20 contemplates a single collective bargaining agreement is section 20.7(7), which requires the parties' agreement to engage in supplemental bargaining for part of a unit:

> 7. If agreed to by the parties nothing in this chapter shall be construed to prohibit supplementary bargaining on behalf of public employees in a part of the bargaining unit concerning matters uniquely affecting those public employees or cooperation and coordination of bargaining between two or more bargaining units.

See id. §§ 20.7(7) (2017) (2019). Even when there are unique needs affecting some unit employees, chapter 20 contemplates cohesive negotiations for the entire unit seemingly in furtherance of a single collective bargaining agreement.

In the case at hand, however, there are nuances for the parties to navigate in negotiating one collective bargaining agreement. For one, as we discuss below in response to Question 12, the section 20.22 binding arbitration procedures differ. The transit employees are subject to binding arbitration procedures outlined in chapter 20 in effect as of February 16, 2017. The non-transit employees are subject to the arbitration procedures of the current statute, which reflects House File 291 amendments.

Further, the non-transit employees are subject to amended chapter

20 and its requirement of a five-year maximum duration for collective bargaining agreements. *See id.* § 20.9(4) (2019). Pursuant to Iowa Code section 20.27, the transit employees are not subject to this same requirement.

In sum, chapter 20 contemplates that parties engage in cohesive negotiations for a unit in the furtherance of one collective bargaining agreement. For a mixed unit of transit and non-transit employees, there are some nuances the parties must navigate such as different arbitration procedures and the maximum contract duration for the non-transit employees. Nonetheless, in the absence of agreement, the parties are required to negotiate a single collective bargaining agreement.

Question 11. (4(k)).

Question 11 inquires as to the maximum duration of a collective bargaining agreement with respect to the non-transit employees. Unlike the transit employees, the non-transit employees are subject to the House File 291 amendments and the current Iowa Code chapter 20. Pursuant to Iowa Code section 20.9(4), the maximum duration for a collective bargaining agreement is five years. *See* Iowa Code § 20.9(4) (2019). The maximum duration applies regardless of the unit's public safety status. Accordingly, on behalf of the non-transit employees, the parties' collective bargaining agreement "shall not exceed five years." *See id.*

Question 12. (4(l)).

The question posed as "4(l)" inquires as to the relevant binding interest arbitration procedures for the transit employees and for the non-transit employees in one unit. In both pre-House File 291 chapter 20 and amended chapter 20, binding arbitration procedures are set out in Iowa Code section 20.22, "Binding arbitration." *See* Iowa Code § 20.22 (2017), § 20.22 (2019). Binding arbitration procedures changed in several respects with House File 291 amendments. The amendments set different procedures for units based on their public safety status.

For non-public safety units, the arbitrator must now consider comparable private sector available data and the financial ability of the employer to meet the cost under present economic conditions. The arbitrator is precluded from considering the employer's ability to fund an award through taxes, fees, or charges, and may not consider the parties' past collective bargaining agreements.[6] Most significant is the limit on the one mandatorily negotiable subject "base wages" where the arbitrator's award is limited to the lesser of the following percentages: three percent or the percent increase in the consumer price index. There are other less significant changes that apply equally to the public safety units such as the parties' ability to agree to a final offer exchange deadline; the

6 This does not include the parties' present collective bargaining agreement. *See United Elec., Radio & Mach. Workers of Am. v. Iowa Pub. Emp't Rel. Bd.*, 928 N.W.2d 101, 114 (Iowa 2019).

arbitrator's requirement to address considerations in a determination; and some limitations of evidence regarding excluded subjects.

The transit employees are not subject to the amended section 20.22 arbitration procedures. Thus, there are three distinct section 20.22 binding arbitration procedures. There are section 20.22 binding arbitration procedures set out in chapter 20 in effect as of February 16, 2017, and there are the two sets of procedures based on the unit's public safety status as set out in the current chapter 20. The statutory provisions in section 20.19, "Impasse procedures," and section 20.20, "Mediation," were unchanged by House File 291 amendments. *See id.* §§ 20.19, 20.20, and 20.22 (2019).

In the present case, the unit's transit employees are subject to binding arbitration procedures different from procedures applicable to the unit's non-transit employees. As we previously concluded, the statute applicable to the transit employees is Iowa Code chapter 20 in effect as of February 16, 2017. Therefore, the binding arbitration procedures set out in Iowa Code section 20.22 (2017) apply to the transit employees. *See id.* § 20.22 (2017).

For non-transit employees, the current statute in effect at the time of their negotiations and impasse applies. Currently, the binding arbitration procedures set out in Iowa Code section 20.22 (2019) apply. In the case at hand, the non-transit employees are considered part of a public

safety unit. Thus, the binding arbitration procedures for public safety units apply to the non-transit employees. *See id.* § 20.22 (2019).

Question 13. (4(m)).

Question 13 inquires as to the PERB administrative rules applicable to the transit and non-transit employees of the unit. Because Iowa Code chapter 20 in effect as of February 16, 2017, applies to the unit transit employees then it follows that PERB's administrative rules in effect and authorized by that statute apply to these employees. At a future point, the agency may implement administrative rules to address specific circumstances for transit employees. As to the non-transit employees, PERB's current administrative rules apply.

Question 14. (4(n)).

The final question posed inquires if it is "necessary" for the parties or PERB *sua sponte* "to seek separate units for the transit and non-transit employees." Given the conclusions we reached with respect to all other questions posed, we do not see factors or remaining issues, which necessitate separate units for the transit and non-transit employees. Moreover, in our interpretative analyses of relevant chapter 20 provisions, we do not glean legislative intent to establish units comprised solely of public safety employees or transit employees due to their unique nature. Nonetheless, in keeping the unit intact, we addressed the effects of various statutory applications and the practical considerations for the parties.

In any event, the parties may file a petition with PERB to amend the unit at any time. Under the existing chapter 20 as well as the statute in existence as of February 16, 2017, an employer or an employee organization may file a petition to amend a bargaining unit. *See* Iowa Admin. Code r. 621—4.6. The parties' stipulation to the unit amendment is subject to the Board's approval and any objection which may be filed.

If the proposed unit amendment proceeded to hearing, the Board or an administrative law judge determines the appropriateness of the proposed unit, taking into consideration,

> along with other relevant factors, the principles of efficient administration of government, the existence of a community of interest among public employees, the history and extent of public employee organization, geographical location, and the recommendations of the parties involved.

Iowa Code § 20.13.

Employees amended out of the unit are no longer represented by the certified employee organization and covered by the collective bargaining agreement. Thereafter, they may file a combined unit determination and representation petition. *See* Iowa Admin. Code r. 621—4.4.

DATED at Des Moines, Iowa this 16th day of February 2021.

PUBLIC EMPLOYMENT RELATIONS BOARD

Mary T. Gannon, Board Member

Erik M. Helland, Board Member

Original filed EDMS.