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PERB
BU-0549

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF:	)	
SIOUX CITY TRANSIT SYSTEM, Public Employer,	)	
and	)	BU-0549
AMALGAMATED TRANSIT UNION, DIVISION 779, Certified Employee Organization.	)	

RULING AND ORDER

On August 31, 2018, pursuant to PERB subrule 621—5.6(3)(*a*), the Certified Employee Organization, Amalgamated Transit Union, Division 779 (ATU Local 779 or ATU Division 779), timely filed an objection to the Public Employment Relations Board's (PERB or Board) Notice of Intent to Conduct an Election. Pursuant to Iowa Code section 20.15(2) and PERB subrule 621—5.6(2)(*a*), PERB filed the notice for the retention and recertification election of ATU Local 779 as the exclusive representative of a bargaining unit of Sioux City Transit System employees referenced as "BU-0549."

ATU Local 779 objects to the election alleging the unit consists of transit workers and, according to the Department of Labor (DOL), a retention and recertification election would jeopardize the receipt of Federal Transit Authority (FTA) funds by the Sioux City Transit System. ATU Local 779 asserts that it is effectively exempt from the election by virtue of Iowa Code section 20.27, which

deems any provision of chapter 20 inoperative if the provision jeopardizes federal funding.

The Sioux City Transit System does not resist ATU Local 779's objection.

Based upon the entirety of the record in this case, including the record in *In the Matter of Amalgamated Transit Union, Locals 312, 441, 638, 779 and 1192 and State of Iowa and Des Moines Area Regional Transit Authority*, 2018 PERB 102202, the objection of ATU Local 638 is SUSTAINED.

Factual background and proceedings.

In its objection and pursuant to PERB subrule 621—5.1(2)(*b*), ATU Local 779 also requested an extension of time in which to pay its election fee. In our order filed September 7, we concluded ATU Local 779's request was supported by good cause. We granted the extension "until a date certain determined by further order of the Board."

On July 3, 2018, before filing its objection in this case, ATU Local 779 filed with PERB a petition seeking a declaratory order on whether it was exempted from a retention and recertification election. ATU Local 779 filed the petition along with four other ATU locals (Collectively referred to as ATU).[1] On September 21, 2018, we issued our declaratory order in the case, No. 2018 PERB 102202.

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[1] The four ATU locals and respective public employers of public employee transit workers were ATU Local 312 and the City of Davenport; ATU Local 441 and the Des Moines Area Regional Transit Authority; ATU Local 638 and the City of Cedar Rapids; and ATU Local 1192 and the Metropolitan Transit Authority of Black Hawk County.

Subsequently, on September 24, 2018, we issued a scheduling order for the present case and took judicial notice of Case No. 2018 PERB 102202. In our scheduling order, the public employer was given a deadline of September 27 to file a resistance and oral arguments were scheduled for September 28, 2018, in the event a resistance was filed. The Sioux City Transit System did not file a resistance by the deadline indicated. Thus, we did not proceed with oral arguments and reach our ruling based on the objection of record and our declaratory order in 2018 PERB 102202. The relevant facts are those set forth in the declaratory order and reflected in the below discussion.

Discussion.

Due to our reliance on Case No. 2018 PERB 102202, we briefly summarize our declaratory order. ATU's petition for a declaratory order requested PERB's declaratory order on the question,

> Does Iowa Code § 20.27 ("Conflict with federal aid") require an exemption from the retention and recertification elections mandated under Iowa Code § 20.25(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?

The facts demonstrated that the five petitioning ATU locals represent bargaining units comprised of 100 percent transit workers employed by public employers that receive federal transit funds. The receipt of FTA funds by the five public employers, including the Sioux City Transit System, is subject to the U.S. Secretary of Labor's certification before funds are released. The Secretary must certify that each public employer has protective arrangements, made on behalf of transit employees, that comply with federally mandated protections

set forth in section 13(c) of the FTA now codified as 49 U.S.C. § 5333(b).[2] These protective arrangements are referred to as "Section 13(c) agreements."

After Iowa Code chapter 20 was amended by 2017 Iowa Acts, House File 291, ATU International objected to the DOL that the amended statute conflicted with 49 U.S.C. § 5333(b) requirements if applied to ATU locals and their represented bargaining units. In response, the DOL determined provisions of amended chapter 20, including the Iowa Code section 20.15(2) retention and recertification elections, conflicted with federally mandated requirements under 49 U.S.C. § 5333(b). The DOL concluded that this conflict jeopardized the public employer's ability to receive federal transit funds.

ATU filed its petition for a declaratory order from PERB in anticipation of retention and recertification elections required of ATU locals this fall. In our declaratory order issued September 21, 2018, we determined the facts warranted the application of section 20.27, which provides,

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

In the Matter of Amalgamated Transit Union, Locals 312, 441, 638, 779 and 1192, 2018 PERB 102202 at 12. Therefore, we deemed the retention and

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[2] 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 U.S.C § 5333(b)(2)(B).

recertification requirements of section 20.15(2) provisions inoperative to the five ATU locals that represent 100 percent transit employees. *Id.* at 13.

We reach the same conclusions as we did in our declaratory order. Because the receipt of federal funds is jeopardized, the provisions of Iowa Code section 20.15(2) requiring a retention and recertification election of ATU Local 779 are inoperative.

Accordingly, we enter the following:

RULING

ATU Local 779's objection is SUSTAINED.

ORDER

PERB's "Order Directing Retention and Recertification Election" is rescinded and no election fee is due from ATU Local 779.

The Public Employer shall remove all prior postings related to the election and in their place post this Ruling and Order for a period of not less than ten days.

DATED at Des Moines, Iowa this 28th day of September, 2018.

PUBLIC EMPLOYMENT RELATIONS BOARD

Jamie K. Van Fossen, Interim Chair

Mary T. Gannon, Board Member

Original filed EDMS.