

BOARD OF SUPERVISORS MEETING

Meeting Notice

Tama County Board of Supervisors

104 W. State St., Toledo, IA 52342

Mon., Oct. 26, 2026

Meetings may also be available online for viewing and/or participating in by clicking the below link barring no power, internet, or equipment failure or other unforeseen circumstances. Meetings will still be held if there is no electronic availability.

[Click here to join meeting](#)

Agenda Schedule

** Agenda is not printed in any particular order, only time specific items will be addressed at certain times

8:30AM

Call to Order, Pledge of Allegiance

Approve agenda

Public comments-This time is set aside for public comments on County business topics. To be recognized raise your hand or stand. After recognition by the Chair, state your name and address. You may speak one time per issue. If the comment is for an item not on the agenda, please understand the Board of Supervisors will not act on your comments at this meeting due to the Open Meetings Law requirements but may do so at a future board meeting by placing it on the agenda. The Chair and Board members welcome comments from the public; however, all comments must be directed to the board and not others in attendance; keep your comments germane; it is not appropriate to use profane, obscene, or slanderous language. No personal attacks will be allowed. The Chair may limit each speaker to three minutes.

Discuss/Approve 10/19/26 regular minutes

Engineer-road projects report

IT projects report

Discussion/possible action to appoint new commissioner to Veteran Affairs

Discussion/possible action on 2026 County Weed Commissioner's Annual Report

Discussion/possible action to set date & time of General Election Canvass

Discussion/possible action to authorize the auditor to send annual tax suspension letter to DHS per Iowa Code 429.9 to check for eligibility

Discussion/possible action on Resolution 10-26-2026A to change depository amounts

Discussion/possible action on Refund of Tax per Iowa Code 701-100.7 for parcel # 0711151005, 0703377014, 0509176004, & 1010300007

Presentation and Discussion Regarding a Potential New Jail Facility

Discussion/approve claims

New Business:

Discussion/possible action: Supervisor reports

Public comments

Discussion/possible action regarding memo to Secondary Roads Union

Discussion/possible action on E911 & Sheriff Union Initial Proposals

Exempt Meeting-Iowa Code Chapter 20.17(3) Negotiating sessions, strategy meetings of public employers, mediation, and the deliberative process of arbitrators shall be exempt from the provisions of chapter 21. This session will be used to discuss these items.

Discussion/possible action on items from the Exempt Session

Adjourn

Board of Supervisors Minutes
October 19, 2026

The Tama County Board of Supervisors met at 8:30 a.m. October 19, 2026. Present: 1st District Supervisor, Curt Hilmer; 2nd District Supervisor, David Turner; 3rd District Supervisor, Heather Knebel; 4th District Supervisor, Mark Doland and 5th District Supervisor, Curt Kupka. Also, Tama County Auditor, Karen Rohrs, and members of the public.

The Pledge of Allegiance was recited.

Motion by Turner, seconded by Kupka to approve the agenda. Discussion: None. All voted aye. Motion carried.

Public Comments: Public comments were heard from Bill Faircloth, Karen Murty, and Jim Smith. Public comment time closed at 8:48 am.

Motion by Hilmer, seconded by Doland to approve the minutes of the October 12th regular meeting. Discussion: None. All voted aye. Motion carried.

Due to a scheduling conflict an exempt session was not held, and no action was taken.

Engineer Primus gave a roads project report.

Engineer Primus presented a resolution for the Board to approve. Motion by Doland, seconded by Turner to approve the following resolution. Discussion: None.

RESOLUTION 10-19-2026A

BE IT RESOLVED by the Board of Supervisors of Tama County, Iowa, that Jordan Primus, P.E., the County Engineer of Tama County, Iowa, be and is hereby designated, authorized, and empowered on behalf of the Board of Supervisors of said County to execute the certification of completion of work and final acceptance thereof in accordance with plans and specifications in connection with all Farm-to-Market and Federal or State aid construction projects in this county. Roll Call Vote: Hilmer, aye. Turner, aye. Knebel, aye. Doland, aye. Kupka, aye. Resolution passed and adopted this 19th day of October, 2026. Heather Knebel, Chairwoman, Board of Supervisors. Karen Rohrs, County Auditor.

Supervisor Turner gave an IT projects report.

Motion by Kupka, seconded by Doland to approve a temporary liquor license for Traveling Tapster, LLC for a Sip & Shop event to be held at the Tama Co. Market on November 5th. Discussion: None. All voted aye. Motion carried.

Motion by Turner, seconded by Doland to approve the Recorder's Quarterly Report. Discussion: None. All voted aye. Motion carried.

The Board had previously approved appropriating 50% of Public Health's approved budget funds to be spent. Public Health had approached the Board requesting the second half of their funds to be

appropriated to them. Motion by Doland, seconded by Hilmer to approve the following resolution to appropriate all but 10% of Public Health's remaining funds for FY2027. Discussion: A total of 90% of Public Health's budget is being appropriated to them.

RESOLUTION 10-19-2026B

Authorizing Appropriations to County Officers and Departments for FY2026/2027

WHEREAS, the County Board of Supervisors shall appropriate dollars for all budgetary departments based on Iowa Code 331.433(6);

WHEREAS, appropriations on Budgetary Funds/Departments for FY26/27 are based on the Notice of Public Hearing-Budget Estimate published on April 10, 2026.

NOW, THEREFORE BE IT RESOLVED, the Tama County Board of Supervisors agree to appropriate the rates as attached for each department.

DEPT. #	DEPARTMENT NAME	FY2026 Budgeted Amount	FY2026 APPROPRIATION
23	Local Health/Nurses	1,076,283	968,655
	TOTALS	1,076,283	968,655

Roll Call Vote: Hilmer, aye. Turner, aye. Knebel, aye. Doland, aye. Kupka, nay. Resolution passed and adopted this 19th day of October, 2026. Heather Knebel, Chairwoman, Board of Supervisors. Karen Rohrs, County Auditor.

Motion by Turner, seconded by Kupka to approve a tax refund per Iowa Code 701-100.7 on parcel #0911300033 in the amount of \$1,454 and direct the treasurer to make that payment. Discussion: Other parcels needing this refund will be added to next week's agenda. All voted aye. Motion carried.

Sheriff Schmidt was present to inform the Board that he had reached out to the Samuels Group to start the process of gathering information for a proposed new jail facility. Unfortunately, the representative was unable to come to today's meeting but will be here next week to discuss their findings.

Motion by Turner, seconded by Kupka to approve the regular claims for payment as presented in the amount of \$299,967.84. Discussion: Most of this amount was due to secondary roads purchasing fuel, rock, and a new vehicle. All voted aye. Motion carried.

New Business: Supervisor Doland informed the Board that he had attended a mental health meeting that was held at UnityPoint in Marshalltown. A presentation was given by Thrive Iowa that is a program that is funded through a grant and offered in Tama and Marshall County. Supervisor Turner stated a presentation on cancer was given last week and was well attended.

Public Comments: Public comments were heard from Jim Smith and Karen Murty. Public comment time closed at 9:43 am.

Motion by Hilmer, seconded by Turner to adjourn the meeting. All voted aye. Motion carried. Chairwoman Knebel adjourned the meeting at 9:43 am.

These minutes are intended to provide a summary of the discussions and decisions made during the Board of Supervisor meeting. For the most accurate and comprehensive record, please refer to the audio recording of the meeting that can be provided upon request at the auditor's office.



2026 WEED COMMISSIONER'S REPORT

For the County of: Tama

Submit to County Board of Supervisors by:
Return copy to the IDALS office by:

November 1, 2026
December 1, 2026

Weed Commissioner's Contact Information:

Name Laura Wilson	Year Appointed 2025
Address 129 W High St	Telephone 641-654-7045
City, Zip Code Toledo, 52342	Alternate Telephone 641-484-4788
Email Address lwilson@tamacounty.org	Pesticide Certificate # 62855

Which of the noxious weeds have you found in your county?

1 – Found, a problem in my county
2 – Found, but not a problem

3 – Not known in my county
? – If you cannot identify this plant

<i>Primary Noxious Weeds</i>	<i>Answer</i>	<i>Secondary Noxious Weeds</i>	<i>Answer</i>
Buckthorn	1	Buckhorn Plantain	3
Bull Thistle	3	Cocklebur	2
Canada Thistle	3	Curly Dock (Sour Dock)	1
Field Bindweed	?	Multiflora Rose	2
Hoary Cress (Perennial Pepper-grass)	1	Poison Hemlock	2
Horse Nettle	2	Puncturevine	3
Leafy Spurge	2	Red Sorrel (Sheep sorrel)	2
Musk Thistle	3	Shattercane	2
Palmer Amaranth	2	Smooth Dock	2
Perennial Sow Thistle	3	Teasel	3
Quackgrass	2	Velvetleaf (Butterprint)	2
Russian Knapweed	3	Wild Carrot	1
		Wild Mustard	3
		Wild Sunflower	3

<i>Invasive Prohibited Plants</i>	Answer		
Garlic Mustard	3		
Japanese Hop	2		
Japanese Knotweed	2		
Oriental Bittersweet	3		
Purple Loosestrife	3		

Please list any other plants which are a problem or a concern in your county:

Wild Parsnip (Causes severe rash and health issues, not considered 'noxious' in IA law)

As County Weed Commissioner, do your duties include roadside spraying?

Yes ☐ No ☒

Did your county publish a Notice of Program for weed control pursuant to the provisions of Title VIII Chapter 317 Section 317.14?

Yes ☒ No ☐

Did your county employ contract spraying during 2026?

Yes ☐ No ☒

If yes, what percentage of your total spray program is contracted? _____%

If possible, please list the contract rates. \$/mile _____

Total contract cost \$ _____

In the past year how much did your county spend on purchasing herbicides?

\$ 15,069.05

How many times during 2026 was it necessary to serve a noxious weed notice?

Private (written) 2 Public (written) (DOT, DNR, CCB) 0

How many times did you contact individuals personally, rather than sending them a weed control notice?

Private (verbal) 1 Public (verbal) (DOT, DNR, CCB) 0

How many times did you actually enter private or public land, control weeds, and assess the cost to the owner?

0

How many months were you employed as weed commissioner in 2026?

10 months

Are your duties as weed commissioner incorporated into another county job?

Yes ☒ No ☐ If Yes, what? Zoning Administrator

Weed Comm. Duties 2% IRVM Duties _____%

Other County Duties 98%

How does the overall county weed situation compare with last year?

Improved ☐ Unchanged ☐ Worse ☒

Comments? Most weeds listed on the 'found' section were noted by the Secondary Roads Dept and not reported on personal property.

People are adverse to "turning in neighbors". Unsure if the level of noxious weeds is due to nature, human inaction, or greater level of reporting.

Is brush control included in your weed commissioner duties?

Yes ☐ No ☒

If yes, what method(s) do you use? *(Circle all that apply):*

Spraying ☐ Cutting ☐ Stump treatment ☐ Basal bark ☐

Other, explain _____

What are your suggestions and/or recommendations which may improve your county weed and brush infestations?

Reviewing and possibly revising county weed control plan for right-of-way areas.

What herbicides did your county use in your weed control program? Be specific, please list brand name and quantity of each. Please do not list surfactants or adjuvants. If the spray program is contracted in your county, ask your contractor for this information. Add another page if necessary.

Herbicide usage table:

CHEMICAL/BRAND	RATE USED	QUANTITY USED	TO CONTROL?
<i>(Example)</i> <i>Milestone</i>	<i>4 fluid ounces</i> <i>per acre</i>	<i>3.32 gallons</i>	<i>Thistle and teasel</i> <i>on roadside</i>
Glyphosate Pro 4	3 qt/ac	50 gal	non-selection burndown
Esplanade 200 SC (Plateau/Frequency)	7 oz/ac	10 gal	bare ground
Ecomazapry 2SL	3 pints/ac	55 gal	bare ground
Pathfinder II / Pathway	Surface application	50 gal	brush/ cut stump
Escort xp	2 oz/ac	256 oz	broadleaf
method	8 oz/ac	5 gal	broadleaf

The above report is true to the best of my knowledge.

Signature _____
County Weed Commissioner Date _____

Signature _____
Chairman, County Board of Supervisors Date _____

Please return a copy to: Iowa Department of Agriculture and Land Stewardship
Attn: State Weed Commissioner
2230 S Ankeny Blvd
Ankeny, IA 50023-9093

RESOLUTION 10-26-2026A

BE IT RESOLVED, that the Tama County Board of Supervisors hereby resolves to authorize the County Treasurer to deposit county funds in the following banks and set the amounts as follows:

State Bank of Toledo, Toledo	20,000,000
------------------------------	------------

October 26, 2026

To: Tama County Board of Supervisors

Fr: Paul Greufe, MBA, SPHR, SCP

Re: Secondary Roads Union

Background

Tama County conducted union negotiations with the Secondary Roads union in February of 2026 to make changes to the collective bargaining agreement that would be effective July 1, 2026.

Iowa Code 20.29 requires the final agreed upon collective bargaining agreement be filed online with the Iowa Employment Appeal Board. (EAB, formerly PERB). As the chief negotiator, I downloaded the current collective bargaining agreement from the Iowa Employment Appeal Board's (EAB) website in preparation for these negotiations.

The collective bargaining agreement that had been filed with EAB is attached and it's cover page shows a contract duration of July 1, 2024 to June 30, 2027.

Iowa Code Chapter 20.9(4) states, "The term of a contract entered into pursuant this chapter shall not exceed five years".

Process

The normal process is established by Iowa Code, (relevant to the current situation).

1. The Union provides its initial bargaining position to Tama County, in open session, to the Board of Supervisors.
2. Tama County, within 2 weeks of receiving the Union's proposal, presents its initial bargaining position to the Union, in open session, through the Board of Supervisors.
3. Negotiations continue until a tentative agreement is reached.
4. The Union has the tentative agreement ratified by a majority of its union members.
5. Once ratified, the Union notifies Tama County's chief negotiator, and the contract is presented in open session to the Tama County Board of Supervisor's for their discussion and formal approval (vote) of the collective bargaining agreement by a majority of board members.

Iowa Code Chapter 20.17(3) states the following related to bullet points 1 and 2: (emphasis added)

*Negotiating sessions, strategy meetings of public employers, mediation, and the deliberative process of arbitrators shall be exempt from the provisions of [chapter 21](#).
However , the employee organization shall present its initial bargaining position to the*

public employer at the first bargaining session. The public employer shall present its initial bargaining position to the employee organization at the second bargaining session, which shall be held no later than two weeks following the first bargaining session. Both sessions shall be open to the public and subject to the provisions of chapter 21. Parties who by agreement are utilizing a cooperative alternative bargaining process may exchange their respective initial interest statements in lieu of initial bargaining positions at these open sessions. Hearings conducted by arbitrators shall be open to the public.

Iowa Code Chapter 20.17(4) states the following related to bullet point 4: (emphasis added)

The terms of a proposed collective bargaining agreement shall be made available to the public by the public employer and reasonable notice shall be given to the public employees by the employee organization prior to a ratification election. The collective bargaining agreement shall become effective only if ratified by a majority of those voting by secret ballot.

Iowa Administrative Code 621 – 6.5 states the following related to bullet point 5: (emphasis added)

Acceptance or rejection by public employer. The public employer shall, within ten days of the tentative agreement, likewise meet to accept or reject the agreement, and shall within 24 hours of the acceptance or rejection serve notice on the employee organization of its acceptance or rejection of the proposed agreement; however, the public employer shall not be required to either accept or reject the tentative agreement if it has been rejected by the employee organization.

Issue

Following the successful negotiations in February of 2026, I requested a signature page from the union representative, Greg Cross. On July 8, 2026, I received a signature page from Mr. Cross that was dated December 4, 2024, showing a contract duration of July 1, 2024 through June 30, 2032.

Given the contract duration discrepancy between the official, filed copy located on the EAB website (2024-2027) and the signature page presented by Mr. Cross (2024-2032), I requested additional information in an attempt to discern what other changes were made between July 1, 2024 and December 31, 2025 that weren't reflected in the recognized 2024-2027 contract.

Changes

The following changes were made sometime between July 1, 2024 and January 7, 2026 without approval (never voted on) by the Tama County Board of Supervisors.

1. Vacation

Prior Allotment		Current Allotment (never approved)	
<i>Years of Service</i>	<i>Paid Days</i>	<i>Years of Service</i>	<i>Paid Days</i>
1 year	5 days	After 60 days	5 days
2 years	10 days	1 year	10 days
8 years	15 days	2 years	15 days
15 years	20 days	8 years	20 days
		15 years	25 days

2. Wages

Employees were given a 1.5% wage increase on July 1, 2025 and a 1.5% wage increase on January 12, 2026.

3. Grievance Procedure

Section 3 of the grievance procedure was altered.

The following version represents the procedure that was approved by the Board of Supervisors upon the ratification of the original 2024-2027 contract.

Section 3. If no satisfactory agreement is reached in Section 1 or 2 above, a meeting shall be held between the Board of Supervisors and the President, Secretary-Treasurer, and the designated Area of District Steward representing the aggrieved. The Business Manager may attend such meeting when deemed necessary. The aggrieved may attend such a meeting if he/she so desires. The decision of the Board of Supervisors will be final and binding.

The following version represents the procedure that was not approved by the Board of Supervisors, but the Union claims to be valid and in effect.

Section 3. If no satisfactory agreement is reached in Section 1 or 2 above, a meeting shall be held between the Board of Supervisors and the President, Secretary-Treasurer, and the designated Area of District Steward representing the aggrieved. The Business Manager may attend such meeting when deemed necessary. The aggrieved may attend such a meeting if he/she so desires. If no satisfactory agreement is reached, then the dispute will be submitted to arbitration in the manner hereafter provided.

A grievance may be submitted to arbitration by either party. A list of five (5) impartial arbitrators will be requested from the Public Employment Relations Board. At any time prior to the commencement of the arbitrator selection process, either party may request one (1) additional list of five (5) impartial arbitrators from the same source.

The hearing shall be held by the arbitrator at a time and place mutually agreed upon or as designated by the arbitrator in the event there is no mutual agreement. The award of the arbitrator shall be final and binding. A decision from the arbitrator shall be rendered to both parties within thirty (30) days following the hearing.

The expenses of the arbitrator shall be shared equally between the Employer and the Union.

4. Duration

The Tama County Board of Supervisors approved (via vote) the original 2024-2027 contract duration.

The Union claims the contract duration is valid from 2024-2032, but this adjustment was never voted on by the Tama County Board of Supervisors.

Research

In an attempt to determine the timeline of events, I researched prior Tama County Board of Supervisors agendas and corresponding minutes. I reviewed relevant articles from the Tama-Toledo News Chronicle and the North Tama Telegraph and watched videos of board meetings on the Tama County Against Turbines YouTube channel.

In summary, it does not appear that the normal process (as outlined previously) was followed. I was unable to find any Tama County Board of Supervisor's agenda items relating to initial proposals or any BOS vote on any of the contract changes that took place between July 1, 2024 and December 31, 2025.

I located an Iowa Supreme Court Case that appeared to be germane to our current situation. No. 18-0018 Service Employees International Union, Local 199 vs State of Iowa, Iowa Board of Regents.

I am not an attorney, but the case appears to suggest if the Board doesn't vote affirmatively on the changes to the collective bargaining agreement, those changes are unenforceable.

Solution

The Tama County Board of Supervisor's authorized me to contact the union to try to rectify these mistakes without the need for litigation or formal action with the Iowa Employment Appeal Board. The Board's clear direction was they didn't want employees to be negatively affected personally but needed to try to address some serious concerns with the process that was followed. As a result, I offered to the union that Tama County would leave the vacation change in

place and leave the wage change in place, but we requested the contract duration remain at 2024-2027 and the grievance procedure remain as written in the 2024-2027 contract.

The union declined this compromise.

Tama County then adjusted its request to allow the vacation changes to remain in place, the wage rate to remain in place, and the Tama County Board of Supervisors would allow the contract duration to be altered to end in 2032. The only concession requested was to adhere to grievance procedure as written in the 2024-2027.

The union declined this compromise.

Even after discussing with the union representative that if this goes to court and Tama County files a petition for declaratory judgement, we are likely to have all of the improper changes rescinded, (vacation, wage, grievance, and duration), the Union said they would rather go to court and lose than accept the compromise.

In a final attempt to avoid legal action, on October 22 I met with all union employees to share the facts of the case and to ensure Tama County employees were aware of the situation.

Attachments

1. 2024-2027 collective bargaining agreement between the Tama County Board of Supervisors and Local No. 886, United Electrical, Radio & Machine Workers of America.
2. Iowa Code Chapter 20
3. Iowa Supreme Court Ruling, SEIU v Board of Regents
4. Letter of Agreement regarding the vacation change
 - a. Purported to be signed on December 4, 2024
 - b. The Tama County BOS was not in session on December 4, 2024
 - c. Letterhead shows an area code of 515.
5. Letter of Agreement regarding the grievance change
 - a. The signature lines presented as “Board Chair”, “Vice Chair”, and “Chairman” appear to be signed by union employees, not by members of the Tama County Board of Supervisors.
 - b. Signatures show a date of January 7, 2025. On this date Tama County was represented by a 5-member BOS which is not reflected on the letterhead.
 - c. Letterhead shows an area code of 515.
6. Article 18, Effective Dates document
 - a. Purported to be signed on December 4, 2024
 - b. The Tama County BOS was not in session on December 4, 2024

TAMA COUNTY BOARD OF SUPERVISORS

P.O. Box 61, 104 W. State Street, Toledo, Iowa 52342

(515) 484-3980 FAX (515) 484-5127

Curt Hilmer, 1st District Supervisor
William Faircloth, 2nd District Supervisor
Dan Anderson, 3rd District Supervisor, Chair

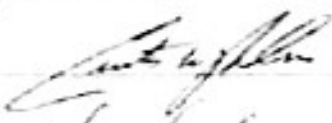
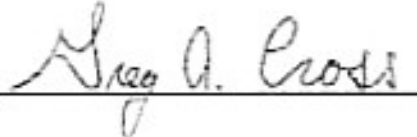
12/4/2024

Letter of Agreement between United Electric, Radio & Machine Workers #886 & employer
Tama County.

MOU: November of 2023 Tama County Board of Supervisors updated the vacation schedule
below to be added to the Secondary Roads contract in the next full contract negotiations:

After probation period (60) sixty days	one (1) week (40 hrs.)
After one (1) year of service:	two (2) weeks (80 hrs.)
After two (2) years of service:	three (3) weeks (120 hrs.)
After eight (8) years of service:	four (4) weeks (160 hrs.)
After fifteen (15) years of service:	five (5) weeks (200 hrs.)

November 2023 the Board of Supervisors decided that the Union Contract Page 4 Article 7
Subsection (e) will be interpreted to be: If any County Secondary Road worker(s) dies, all
employees shall be given the day off with pay who attend the funeral. This will be bereavement
pay

	Board Chair	Date: 12-4-24
	Vice Chair	Date: 12-4-24
	Chairman	Date: 12-4-24
	UE International Representative	Date: 12/19/24

TAMA COUNTY BOARD OF SUPERVISORS

P.O. Box 61, 104 W. State Street, Toledo, Iowa 52342

(515) 484-3980 FAX (515) 484-5127

Curt Hilmer, 1st District Supervisor
William Faircloth, 2nd District Supervisor
Don Anderson, 3rd District Supervisor, Chair

12/9/2024

Letter of Agreement between United Electric, Radio & Machine Workers #886 & employer
Tama County.

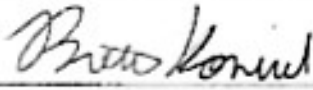
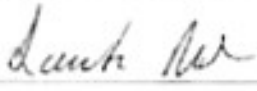
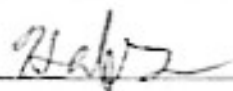
MOU: Tama County Board of Supervisors has updated ARTICLE 5 Grievance Procedure
Section 3 as follows be added to the Secondary Roads contract in the next full contract
negotiations:

Section 3. If no satisfactory agreement is reached in Section 1 or 2 above, a meeting shall be held between the Board of Supervisors and the President, Secretary-Treasurer, and the designated Area of District Steward representing the aggrieved. The Business Manager may attend such meeting when deemed necessary. The aggrieved may attend such a meeting if he/she so desires. If no satisfactory agreement is reached, then the dispute will be submitted to arbitration in the manner hereafter provided.

A grievance may be submitted to arbitration by either party. A list of five (5) impartial arbitrators will be requested from the Public Employment Relations Board. At any time prior to the commencement of the arbitrator selection process, either party may request one (1) additional list of five (5) impartial arbitrators from the same source.

The hearing shall be held by the arbitrator at a time and place mutually agreed upon or as designated by the arbitrator in the event there is no mutual agreement. The award of the arbitrator shall be final and binding. A decision from the arbitrator shall be rendered to both parties within thirty (30) days following the hearing.

The expenses of the arbitrator shall be shared equally between the Employer and the Union.

	Board Chair	Date: 1/1/25
	Vice Chair	Date: 1-7-25
	Chairman	Date: 1-7-25

ARTICLE 18
EFFECTIVE DATES

THIS AGREEMENT shall be effective beginning July 1, 2024 and shall continue in full force and effect until its expiration on June 30, 2032, except for a wage reopener each year of the Agreement. The only item open for negotiations in Years 2 through 8 are changes to wage rates.

New wages are in Appendix A for year 1 of this agreement.

Dated this 4 day of Dec, 2024.

TAMA COUNTY, IOWA EMPLOYER
DEPARTMENT

By [Signature]
By [Signature]
By [Signature]

TAMA COUNTY ROAD
LOCAL 886, UE UNION

By [Signature]
By [Signature]
By [Signature]

Acknowledged by:

[Signature]
Human Resources Director

IN THE SUPREME COURT OF IOWA

No. 18-0018

Filed May 17, 2019

Amended July 29, 2019

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 199,

Appellant,

vs.

STATE OF IOWA, IOWA BOARD OF REGENTS,

Appellee.

Appeal from the Iowa District Court for Polk County, Jeffrey D. Farrell, Judge.

Public employee union appeals summary judgment dismissing action to enforce alleged collective bargaining agreement. **AFFIRMED.**

Charles Gribble and Christopher Stewart of Parrish Kruidenier Dunn Boles Gribble Gentry Brown & Bergmann, L.L.P., Des Moines, and Nathan Willems of Rush & Nicholson, Cedar Rapids, for appellant.

Andrew T. Tice of Ahlers & Cooney, P.C., Des Moines, for appellee.

WATERMAN, Justice.

In this appeal, we must determine whether the Iowa Board of Regents and a public employee union entered into an enforceable collective bargaining agreement. The fighting issue is the validity of an agency rule that requires the Board to meet to vote to accept a tentative voluntary agreement ratified by the union before the contract becomes effective. The parties' negotiations are governed by the Public Employment Relations Act (PERA), Iowa Code chapter 20, and rules promulgated by the Public Employment Relations Board (PERB). Iowa Code section 20.17(4) (2017) provides that "[t]he collective bargaining agreement shall become effective only if ratified by a majority of [union members] voting by secret ballot." This statute makes no mention of requiring the public employer to vote to ratify the agreement, but a related statute generally requires final action to be conducted in an open meeting. Iowa Code § 21.5(3). In 1976, PERB enacted Iowa Administrative Code rule 621—6.5 to implement the voting requirements for both the employer and union.¹ The union and Board had each voted to ratify their voluntary collective bargaining agreements consistent with that rule in 2009, 2011, and 2015. However, in 2017, the Board did not vote to approve the proposed agreement ratified by the union.

The union filed this action under Iowa Code section 20.17(5) to enforce the collective bargaining agreement. The Board moved for summary judgment, relying on rule 621—6.5(3). The union argued the agency rule was invalid because it imposed a ratification requirement not included in section 20.17(4). The district court, reading chapter 20 and

¹This rule was renumbered in August 2017 prior to the district court's summary judgment and was formerly Iowa Administrative Code rule 621—6.4. We will refer to the rule by its current number throughout this opinion.

21 together, upheld the validity of the agency rule and granted summary judgment dismissing the union's enforcement action. The union appealed, and we retained the appeal.

On our review, for the reasons explained below, we hold PERB acted within its statutory authority in promulgating rule 621—6.5(3), which has the force of law. The legislature expressly granted PERB rulemaking and interpretive authority. Chapters 20 and 21 are interrelated and must be construed together. Rule 621—6.5 implements ratification voting requirements for both the Board and the union. The district court correctly applied rule 621—6.5(3) to hold the parties had no enforceable collective bargaining agreement without the Board's vote to ratify it. Accordingly, we affirm the summary judgment dismissing this action.

I. Background Facts and Proceedings.

Service Employees International Union, Local 199 (SEIU) represents approximately 3500 employees of the State of Iowa who work at the University of Iowa Hospitals and Clinics (UIHC). The UIHC is governed by the Iowa Board of Regents. Iowa Code § 262.7(1). The Board consists of nine members appointed by the Governor. *Id.* §§ 262.1–.2. The Board meets periodically to “adopt[] rules and policies having general application to the institutions subject to its governance,” including the UIHC. Iowa Admin. Code r. 681—11.1(5); *see also* Iowa Code § 262.9(3). The Board, when acting as a public employer, has discretion to retain attorneys to “carry[] out collective bargaining and related responsibilities provided for under chapter 20.” Iowa Code § 262.9(16). The Board is subject to the open-meetings requirements of Iowa Code chapter 21. *Id.* §§ 21.2(1)(a), .3.

SEIU and the Board negotiated voluntary two-year collective bargaining agreements in 2009, 2011, and 2015.² In each of those years, the Board formally voted to approve the collective bargaining agreement after the ratification vote by SEIU's membership. The agreement negotiated in 2015 expired by its terms on June 30, 2017.

In the fall of 2016, the Board and SEIU began negotiating a new agreement to begin on July 1, 2017. SEIU selected James "Jim" Jacobson as its lead negotiator, and the Board chose Michael Galloway as its lead negotiator. Jacobson and Galloway met on October 10, 2016, to discuss a timeline for the upcoming exchange of offers and ensuing negotiations. The Board met on October 20 and went into a closed session to discuss collective bargaining strategy with counsel and institutional representatives. The Board did not vote to approve any bargaining agreement during this closed session.

On November 29, Jacobson and Galloway exchanged initial bargaining proposals. They met again on December 8 and 14 to discuss the initial proposals and exchange additional proposals. At the December 14 meeting, Jacobson presented SEIU's counteroffer. Galloway made clear to Jacobson that any terms they set at the bargaining table would have to be approved by the Board and that Galloway would have to "sell it" to the Board. Galloway canceled bargaining sessions scheduled for January 5 and 12, 2017.

On January 9, Galloway copied Jacobson on an email to the PERB reporting the status of the parties' negotiations. Galloway's email explained that the Board would soon be extending its final offer:

²During the negotiations for the 2013 contract, the parties reached an impasse that was resolved through binding arbitration. See Iowa Code § 20.22.

We will be giving the union a final offer in writing this week. Jim is correct that we cancelled the 5th so that I could visit with the Board and the hospital regarding my financial authority. I am having surgery on the 11th so I can't make the 12th.

Our final offer will contain all the financial authority I will have. If it is not acceptable, then we should just schedule mediation. Thanks[.]

On January 10, Galloway emailed Jacobson and attached the Regents' final offer accompanied by this explanation:

Please find attached the Board of Regents' final offer to SEIU. The offer includes all the items we had agreed previously upon during negotiations. I believe this offer represents a substantial increase to the inpatient nurses and is a fair offer to the other members of the bargaining unit. This offer contains all the financial authority we have from the Board of Regents. Please let us know if this offer is acceptable.

If the offer is not acceptable, we will need to schedule mediation during the week of January 30th.

The cover page of the January 10 offer stated, "This is a package proposal and must be accepted or rejected in its entirety." Yet the cover page also noted, "The [Board] reserves the right to add to, delete from, and/or revise this proposal."

On January 17, Jacobson called Galloway to ask whether better terms were available on the Weekend Option Program for nurses and a probationary period for new employees. The next day, Jacobson followed up by email to ask if Galloway had spoken to the Board about those matters. Galloway responded that he did "not have a response." However, Galloway foreshadowed headwinds for the Board's ultimate approval of the pending proposal:

I know UIHC would be much more comfortable leaving the probationary status current contract and maintaining our position on weekend option. That being said, the biggest issue now is that the Regents have heard rumors regarding the position AFSCME has taken with the State. It is my understanding that the Union's offer was dramatically lower than 2% and increased the insurance contributions.

I understand these are different units, but there will be grave concerns regarding our offer once it is received/understood by the Governor's office. I knew this could become an issue and was hoping to avoid it by getting this contract completed quickly.

On January 25, Jacobson emailed Galloway to inform him SEIU had accepted the Regents' final offer, stating,

I left you a voicemail earlier today. But I thought I better put it in writing. SEIU has agreed to the terms of the [Board]'s final offer sent via email on January 10, 2017.

SEIU will hold a ratification vote as quickly as possible and let you know the results.

Please contact me regarding drafting a final, clean version of the document.

On January 31, Galloway spoke with Jacobson on the phone and "informed him that there was not an agreement to be ratified and that the parties need[ed] to continue to bargain." Galloway did not expressly withdraw the Board's January 10 offer. On February 1, Jacobson sent Galloway an email clarifying SEIU's position,

In light of our conversation yesterday, I wanted to recap the situation in which SEIU, as the legal representatives of approximately 3,500 health care professionals, and the Board of Regents find themselves.

On January 10, 2017 you sent SEIU, as the chief negotiator for the Board of Regents, a final contract offer.

On January 25, 2017, SEIU accepted the offer with both a voice message and an email message.

On January 31, during a telephone conversation, you and Tim Cook informed me that the Board of Regents believed the parties had not, in fact, reached an agreement.

As I said yesterday, SEIU plans to hold its ratification vote in the very near future. I will inform you of the results.

Please let me know if the Board of Regents' position changes.

On February 8, Jacobson emailed Galloway to inform him of SEIU's ratification vote,

SEIU, Local 199 ratified the tentative agreement the parties reached on January 25, 2017. The vote was held February 7,

2017 with 98.6 percent of the voters in favor of accepting the agreement. Please let me know if you have any questions.

On February 9, House File 291 was introduced in the Iowa House of Representatives. H.F. 291, 87th G.A., 1st Sess. (Iowa 2017). House File 291 made significant amendments to PERA by substantially limiting the number of mandatory bargaining topics for most public employees, including the employees in SEIU's bargaining units. The Governor signed House File 291 into law on February 17, and the amendments took effect immediately.³ 2017 Iowa Acts ch. 2 (codified in part at Iowa Code ch. 20 (2018)).

Although the Board had publicly voted to approve the collective bargaining agreements after SEIU's ratification votes in 2009, 2011, and 2015, the Board held no such vote to approve the 2017 agreement. The Board met on March 8 to discuss and vote to accept a collective bargaining agreement with the faculty union of the University of Northern Iowa. The Board did not consider or approve the SEIU agreement at this meeting.

On March 10, SEIU filed this action in district court pursuant to Iowa Code section 20.17(5) to enforce the collective bargaining agreement. SEIU alleged that the terms in the Board's January 10 offer became a valid collective bargaining agreement upon SEIU's ratification vote. The Board filed a preanswer motion to dismiss, contending that no valid collective bargaining agreement existed to enforce under section 20.17(5). The Board relied on the rule promulgated by PERB that requires a public employer to accept or reject a tentative agreement before the agreement becomes effective. Iowa Admin. Code r. 621—6.5(3). The Board argued the court lacked subject matter jurisdiction without a contract to enforce.

³The amendments invalidated collective bargaining agreements still under negotiation. See H.F. 291, 87th G.A., 1st Sess. § 25 (Iowa 2017) (providing that collective bargaining agreements not completed by that date "shall not become effective").

SEIU resisted the motion to dismiss, arguing rule 621—6.5(3) is invalid and that the agreement became effective when ratified by vote of the union’s members under Iowa Code section 20.17(4). The district court denied the Board’s motion to dismiss, concluding the court had subject matter jurisdiction to determine whether the parties entered into an enforceable agreement.

The Board and SEIU filed cross-motions for summary judgment. The Board relied on rule 621—6.5(3). SEIU argued the Board’s offer was never withdrawn and that rule 621—6.5(3) is invalid because it added a requirement of a vote by the public employer that is not imposed by the controlling statute, Iowa Code section 20.17(4). The district court rejected SEIU’s challenge to the validity of rule 621—6.5(3). The district court noted the Board is subject to the open-meetings and public-voting requirements of Iowa Code chapter 21 and that section 20.17(4) contains no language divesting the Board “of the ability to meet and approve a contract that is negotiated by its representative and the union. PERB’s rule merely spells out when and how that will occur.” The court concluded PERB had the statutory authority to promulgate rule 621—6.5(3). The district court applied that rule to grant summary judgment in favor of the Board stating, “Because the Board of Regents did not approve the tentative contract, there is no executed contract.” The district court denied SEIU’s motion for enlarged findings and dismissed SEIU’s petition. SEIU appealed the district court ruling, and we retained the appeal.

II. Scope of Review.

We review a summary judgment ruling for correction of errors at law. *Peak v. Adams*, 799 N.W.2d 535, 542 (Iowa 2011). “Summary judgment is appropriate if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.” *Emp’rs Mut.*

Cas. Co. v. Van Haaften, 815 N.W.2d 17, 22 (Iowa 2012). “We view the evidence in the light most favorable to the nonmoving party.” *Luana Sav. Bank v. Pro-Build Holdings, Inc.*, 856 N.W.2d 892, 895 (Iowa 2014). “The court must consider on behalf of the nonmoving party every legitimate inference that can be reasonably deduced from the record.” *Thornton v. Am. Interstate Ins.*, 897 N.W.2d 445, 460 (Iowa 2017) (quoting *McIlravy v. N. River Ins.*, 653 N.W.2d 323, 328 (Iowa 2002)).

III. Analysis.

We must decide whether the district court erred by granting the Board’s motion for summary judgment dismissing SEIU’s petition to enforce the 2017 collective bargaining agreement. The fighting issue is the validity of Iowa Administrative Code rule 621—6.5(3). We conclude the district court correctly ruled PERB had the statutory authority to promulgate rule 621—6.5(3) and properly granted summary judgment dismissing SEIU’s action to enforce a contract the Board never voted to approve.

The legislature empowered PERB to adopt rules as the agency deems necessary to carry out the purposes of chapter 20. Iowa Code § 20.6(5). The validity of an agency rule is a question of law. *City of Des Moines v. Iowa Dep’t of Transp.*, 911 N.W.2d 431, 440–41 (Iowa 2018). “Ordinarily, state agency rules are given ‘the force and effect of law.’” *Id.* at 440 (quoting *Stone Container Corp. v. Castle*, 657 N.W.2d 485, 489 (Iowa 2003)). The “rule is ‘presumed valid unless the party challenging the rule proves a “rational agency” could not conclude the rule was within its delegated authority.’” *Id.* at 439 (quoting *Meredith Outdoor Advert., Inc. v. Iowa Dep’t of Transp.*, 648 N.W.2d 109, 117 (Iowa 2002)). “[T]he power of the agency is limited to the power granted by statute.” *Id.* (quoting *Brakke v. Iowa Dep’t of Nat. Res.*, 897 N.W.2d 522, 533 (Iowa 2017)). “Thus, if the

rules adopted by the agency ‘exceed the agency’s statutory authority, the rules are void and invalid.’ ” *Id.* at 441 (quoting *Wallace v. Iowa State Bd. of Educ.*, 770 N.W.2d 344, 348 (Iowa 2009)).

“We do not defer to the agency’s interpretation of its own statutory authority to issue a rule unless ‘the legislature has clearly vested that interpretation in the agency.’ ” *Id.* at 439 (quoting *Brakke*, 897 N.W.2d at 533)). We recently invalidated the department of transportation’s rules regulating placement of automated traffic enforcement equipment on interstate highways because that agency lacked the statutory authority to promulgate such rules. *Id.* at 450. We noted the legislature had not given that agency interpretive authority. *Id.* at 439.

By contrast, the legislature in 2010 “amend[ed] Iowa Code section 20.6 to expressly grant PERB authority to ‘[i]nterpret, apply, and administer’ the provisions of Iowa Code chapter 20.” *AFSCME Iowa Council 61 v. Iowa Pub. Emp’t Relations Bd.*, 846 N.W.2d 873, 878 (Iowa 2014) (quoting 2010 Iowa Acts ch. 1165, § 6 (codified at Iowa Code § 20.6(1) (2011))). Accordingly, we give deference to PERB’s interpretation of chapter 20 as to its statutory authority to promulgate rule 621—6.5 and will uphold PERB’s interpretation unless it is “irrational, illogical, or wholly unjustifiable.” *Id.* (quoting Iowa Code § 17A.19(10)(l) (2013)).

Although PERB is not a party to this case, SEIU may challenge the validity of rule 621—6.5(3) in this action. *Jew v. Univ. of Iowa*, 398 N.W.2d 861, 864 (Iowa 1987) (“A party aggrieved by application of an administrative rule may challenge its validity in an independent action where the rule is sought to be applied.”).

Rule 621—6.5(3) provides,

6.5(3) *Acceptance or rejection by public employer.* The public employer shall, within ten days of the tentative agreement, likewise meet to accept or reject the agreement,

and shall within 24 hours of the acceptance or rejection serve notice on the employee organization of its acceptance or rejection of the proposed agreement; however, the public employer shall not be required to either accept or reject the tentative agreement if it has been rejected by the employee organization.

Iowa Admin. Code r. 621—6.5(3). The ten-day deadline does not apply to the Iowa Board of Regents. *Id.* r. 621—6.5(4)(b).

PERB amended and reenacted Iowa Administrative Code chapter 6 in 2016, including rule 621—6.4(3) (now renumbered to rule 621—6.5(3)).⁴ At that time, PERB had express interpretive authority from the 2010 amendments to Iowa Code section 20.6. *See* Iowa Code § 20.6(1) (2016)) (noting that PERB shall “[i]nterpret, apply, and administer” Iowa Code chapter 20).

SEIU’s challenge to rule 621—6.5(3) is straightforward. SEIU argues this rule is invalid because it adds a requirement for ratification by Board vote that is not found in the controlling statute, which provides,

The terms of a proposed collective bargaining agreement shall be made available to the public by the public employer and reasonable notice shall be given to the public employees by the employee organization prior to a ratification election. The collective bargaining agreement shall become effective only if ratified by a majority of those voting by secret ballot.

Iowa Code § 20.17(4) (2017).

⁴The amendments to Iowa Administrative Code rule 621—6.4(3) were as follows, with additions underlined and removals crossed out:

6.4(3) Acceptance or rejection by public employer. The public employer shall, within ten days of the tentative agreement, likewise meet to accept or reject the agreement, and shall within 24 hours of the acceptance or rejection serve notice on the employee organization of its acceptance or rejection of the proposed agreement; ~~provided, however, that~~ the public employer shall not be required to either accept or reject the tentative agreement if it has been rejected by the employee organization.

38 Iowa Admin. Bull. 1046, 1048 (Dec. 9, 2015) (effective Jan. 13, 2016).

PERB necessarily construed section 20.17(4) to permit rule 621—6.5(3), the rule promulgated by the agency to implement that Code section. Under our standard of review, we will not reverse PERB’s interpretation unless it is “irrational, illogical, or wholly unjustifiable.” *AFSCME Iowa Council 61*, 846 N.W.2d at 878 (quoting Iowa Code § 17A.19(10)(l)). Under this deferential standard of review, we decline to reverse PERB’s statutory interpretation. We reject SEIU’s conflicting interpretation.

Section 20.17(4) expressly requires the union to ratify the proposed collective bargaining agreement without requiring a ratification vote by the public employer. SEIU’s challenge is facially compelling if the statute is read in isolation. But SEIU’s myopic focus on that provision alone must yield to our requirement to read related statutes together and harmonize them if possible. See Iowa Code § 4.7 (“If a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision.”); *Kolzow v. State*, 813 N.W.2d 731, 736 (Iowa 2012) (“If more than one statute relating to the subject matter at issue is relevant to the inquiry, we consider all the statutes together in an effort to harmonize them.” (quoting *State v. Carpenter*, 616 N.W.2d 540, 542 (Iowa 2000))). Our broader analysis shows the rule does not create a new public employer voting requirement omitted from the Iowa Code. To the contrary, rule 621—6.5(3) merely implements statutory voting requirements found in related Code sections for unions and public employers alike.

Both chapter 20 and chapter 21 govern public employers. As the district court correctly concluded, the Board is subject to the open-meetings and public-voting requirements of Iowa Code chapter 21. Iowa Code §§ 21.2(1)(a), .3; *id.* § 262.8. “Final action [by the Board] on any

matter shall be taken in an open session unless some other provision of the Code expressly permits such actions to be taken in closed session.” *Id.* § 21.5(3). Final action includes approval of employment contracts with public employees. *See Hutchison v. Shull*, 878 N.W.2d 221, 237 (Iowa 2016) (holding county board’s deliberations on employee reorganization plan were subject to chapter 21 open-meetings requirements). The statutes are linked by the cross-reference in section 20.17(3), which provides that certain negotiation and strategy discussions may be conducted in closed session while chapter 21’s open-meetings requirements apply to other aspects of collective bargaining.⁵

Contracts with public entities are unenforceable when executed without proper approval or compliance with statutory requirements. *City of Akron v. Akron Westfield Cmty. Sch. Dist.*, 659 N.W.2d 223, 225–27 (Iowa 2003) (per curiam) (holding contract with city is void without formal vote required by statute); *City of McGregor v. Janett*, 546 N.W.2d 616, 620 (Iowa 1996) (“This court has long held that acts by individual members of a public body . . . [are not binding] unless officially sanctioned in accordance with the statute.”); *see also Hutchison*, 878 N.W.2d at 237–38 (noting “Iowa

⁵Section 20.17(3) provides,

Negotiating sessions, strategy meetings of public employers, mediation, and the deliberative process of arbitrators shall be exempt from the provisions of chapter 21. However, the employee organization shall present its initial bargaining position to the public employer at the first bargaining session. The public employer shall present its initial bargaining position to the employee organization at the second bargaining session, which shall be held no later than two weeks following the first bargaining session. Both sessions shall be open to the public and subject to the provisions of chapter 21. Parties who by agreement are utilizing a cooperative alternative bargaining process may exchange their respective initial interest statements in lieu of initial bargaining positions at these open sessions. Hearings conducted by arbitrators shall be open to the public.

Iowa Code § 20.17(3).

Code section 21.6(3)(c) allows the district court to void any action taken by the board” and directing district court on remand to consider whether subsequent board approval vote “cured any violation of the open meetings law”).

“The open meetings law is intended to safeguard free and open democracy by ensuring the government does not unnecessarily conduct its business in secret.” *Hutchison*, 878 N.W.2d at 237. Requiring public, open votes to approve government contracts serves that goal. Formal contract approval requirements also protect taxpayers. *City of Akron*, 659 N.W.2d at 225. “[I]t would be a bad idea to frustrate those requirements.” *Id.* at 225–26. Those who negotiate or enter into contracts with government entities are charged with knowledge of the requirements of a public vote. *See id.* at 225.

Against this backdrop, we conclude the district court correctly determined that PERB acted within its statutory authority by promulgating rule 621—6.5 to implement public-voting requirements for the Board, as codified in chapter 21, as well as the union membership secret-voting requirements, as codified in section 20.17(4).⁶ The district court reasoned,

⁶The rule implements the union voting requirement as follows:

6.5(2) Ratification or rejection by employee organization. Within seven days of the date of the tentative agreement, the employee organization shall conduct a ratification election on the tentative agreement. The employee organization shall give reasonable notice of the date, time and place of the election to the public employees; however, such notice shall be at least 24 hours prior to the election. The vote shall be by secret ballot, and the majority of votes cast will determine acceptance or rejection of the tentative agreement. Only members of the employee organization shall be entitled to vote; however, the employee organization may, pursuant to its internal procedures, extend voting rights to nonmember bargaining unit employees. The employee organization shall, within 24 hours of the conclusion of the election, serve notice on the public employer as to whether or not the proposed agreement has been ratified.

[P]ublic boards and commissions are required to provide notice to the public and meet before voting on any action within the scope of its duties. *See generally* Iowa Code ch. 21. Section 20.17 does not contain any language to suggest that a public body divests itself of the ability to meet and approve a contract that is negotiated by its representative and the union. PERB's rule merely spells out when and how that will occur.

We agree with the district court's analysis. We reject SEIU's argument that rule 621—6.5(3) adds a statutory requirement contrary to section 20.17(4). Section 20.17(4) expressly requires a union vote because no other statute does so. Section 20.17(4) is silent regarding a ratification vote by the public employer because that requirement is codified in chapter 21. *Cf. Gannon v. Bd. of Regents*, 692 N.W.2d 31, 39–44 (Iowa 2005) (holding that a private corporation exercising authority delegated by the Board of Regents was performing a government function and was therefore subject to the open-records requirements of Iowa Code chapter 22). Nothing in section 20.17(4) eliminates the Board's duty to comply with chapter 21 when entering into employment contracts.

The parties' course of conduct with earlier collective bargaining agreements reflects the requirements of chapter 21 and rule 621—6.5(3). The Board voted to ratify the collective bargaining agreements negotiated with SEIU in 2009, 2011, and 2015. Galloway told Jacobson in December 2016 that he would have to "sell" any proposed new contract to the Board. The Board never voted to approve the proposed agreement ratified by the members of SEIU, and Galloway reiterated that there was no enforceable agreement in his discussions with Jacobson on January 31, 2017. Meanwhile, on March 8, as required under chapter 21 and rule 621—6.5(3), the Board voted to approve a separate collective bargaining agreement with the faculty union at the University of Northern Iowa. Galloway provided this uncontroverted testimony:

Throughout my practice, I have served as the chief negotiator in collective bargaining for a variety of public employers on more than 400 occasions. In this capacity, I am not aware of a single voluntary collective bargaining agreement reached involving a public employer with a governing body that was not conditioned upon a ratification vote by that governing body.

PERB promulgated rule 621—6.5(3) in 1976. The rule has withstood the test of time. The legislature in the subsequent four decades has taken no action to invalidate this rule. “We consider the legislature’s inaction as a tacit approval of the [agency’s] action.” *Lowe’s Home Ctrs., LLC v. Iowa Dep’t of Revenue*, 921 N.W.2d 38, 48 (Iowa 2018) (alteration in original) (quoting *City of Sioux City v. Iowa Dep’t of Revenue & Fin.*, 666 N.W.2d 587, 592 (Iowa 2003)).⁷

We hold rule 621—6.5(3) is valid and entitled to the force of law. SEIU has failed to show PERB exceeded its statutory authority by promulgating this rule. The district court correctly applied that rule in granting the Board’s motion for summary judgment. No enforceable agreement was reached without the requisite vote by the Board to approve the proposed collective bargaining agreement.⁸

IV. Disposition.

For those reasons, we affirm the district court’s summary judgment dismissing SEIU’s action to enforce the collective bargaining agreement.

AFFIRMED.

⁷The Iowa Court of Appeals acknowledged the validity of rule 621—6.5(3) (previously 621—6.4(3)) in dicta nearly three decades ago. *Moravia Cmty. Sch. Dist. v. Moravia Educ. Ass’n*, 460 N.W.2d 172, 178 (Iowa Ct. App. 1990) (noting under rule 621—6.4 the union and the public employer each “has the right to accept or reject the tentative agreement”).

⁸The district court also correctly rejected SEIU’s alternative argument that the agreement was approved by operation of law when the Board failed to vote to affirmatively reject the agreement within ten days of the union’s ratification vote. As noted, the ten-day deadline does not apply to the Board as an arm of the State. Iowa Admin. Code r. 621—6.5(4)(b).

Mansfield, Christensen, and McDonald, JJ., join this opinion. Cady, C.J., files a dissenting opinion in which Wiggins, J., joins. Appel, J., files a separate dissenting opinion in which Wiggins, J., joins.

CADY, Chief Justice (dissenting).

I respectfully dissent.

The legislature enacted the open-meetings law to safeguard openness and transparency in government and to ensure that the business of government is not done in secret. *Hutchison v. Shull*, 878 N.W.2d 221, 237 (Iowa 2016). It did not enact this law to change or alter long-standing common law principles that permit negotiations by agents of entities operated by boards to enter into binding agreements prior to final board approval. See *Soults Farms, Inc. v. Schafer*, 797 N.W.2d 92, 100 (Iowa 2011). Of course, the legislature did modify this principle with respect to collective bargaining agreements involving the state, in part, by requiring the union membership to approve a negotiated agreement before it can be binding on the union, but did not similarly require board approval. See Iowa Code § 20.17(4) (2017). Thus, the Public Employment Relations Board had no authority to exercise its rulemaking powers over collective bargaining by using the provisions of the open-meetings law to alter contract law by requiring Board of Regents approval of negotiated collective bargaining agreements. The administrative rule is clearly invalid and does not govern the outcome of this case. The district court erred in concluding otherwise.

Instead, the legal issue in this case is whether the Board intended their agent to reach a binding agreement subject to a union vote. The evidence in the case indicates the State did not intend to be bound by its agent. The evidence reveals the State relied on the invalid administrative rule and never intended to be bound by the negotiations until final Board approval. Thus, even though the rule was invalid, it helped formulate the state of mind of the parties and ultimately the outcome of this case.

Nevertheless, this case cannot be affirmed on this ground. The issue was never raised and decided. Accordingly, I would reverse the decision of the district court and remand the case for further proceedings.

Wiggins, J., joins this dissent.

#18–0018, *Serv. Emps. Int’l Union, Local 199 v. State*

APPEL, Justice (dissenting).

I view the issues in this case differently than the majority. Application of ordinary rules of statutory interpretation, administrative law, and summary judgment compel the conclusion that the district court erred in granting summary judgment.

I. Overview of Issues.

The first question we must confront is whether Iowa Code chapter 20 permits a public employer to empower its representative to make a binding offer. I answer that question in the affirmative because the statute provides that a “public employer may designate any individual as its representative to engage in collective bargaining negotiations.” Iowa Code § 20.17(2) (2017). The common meaning of the term “negotiations,” other jurisdictions’ understanding of the term, and other provisions in Iowa Code chapter 20 all indicate that authority to engage in negotiations includes the authority to make a binding offer.

Moreover, the Iowa Board of Regents (Regents) is specifically authorized to employ an attorney or counselor for “carrying out collective bargaining and related responsibilities.” *Id.* § 262.9(16). To “carry out” means, among other things, “to continue to an end or stopping point.” *Carry out*, *Webster’s Third New International Dictionary* (unabr. ed. 2002) [hereinafter *Webster’s*]. This provision further corroborates that the Regents may empower their designated representative to make a binding offer.

The next issue we must tackle is the validity of an administrative rule that disables public employers from empowering their representatives to make binding offers. Iowa Admin. Code r. 621—6.4(3) (2016). The rule so disables public employers because it requires the employers to meet in

order to accept or reject a “tentative” agreement before the agreement may become binding. *Id.*

The Iowa Administrative Procedure Act (IAPA) instructs that, where agency action based on statutory interpretation is under judicial review, our standard of review depends on whether the agency has clearly been vested with interpretive authority over the interpreted statutory provisions. Iowa Code § 17A.19(10)(c), (l). If there is such clear vesting, then our standard of review includes some deference to the agency interpretation; if not, then we do not defer. *Id.* Importantly, our standard of review must be “applied to the agency action at the time that action was taken.” *Id.* § 17A.19(8)(b); see *Brummer v. Iowa Dep’t of Corr.*, 661 N.W.2d 167, 168 n.1 (Iowa 2003) (explaining that under section 17A.19(8)(b), “we must focus on the agency’s actions during the time period in which” the agency took the challenged action).

The Public Employment Relations Board (PERB) promulgated the rule containing the employer ratification requirement. “[A]t the time that action was taken”—when PERB enacted the rule in 1975 and the three times during 1976 to 1982 PERB necessarily interpreted statutory provisions to substantively modify the employer ratification requirement—PERB lacked interpretive authority over both chapter 20 and the statutory provisions in question. Consequently, we review PERB’s rule for corrections of error at law and are free to substitute our *de novo* interpretation of the statute. Iowa Code § 17A.19(10)(c); *Renda v. Iowa Civil Rights Comm’n*, 784 N.W.2d 8, 11–14 (Iowa 2010).

The majority opinion in this case defers to PERB’s statutory interpretation based on a 2010 express grant of interpretive authority. That approach is wrong. During the time that the grant of interpretive authority was in existence, PERB did not interpret any provision of chapter

20 to modify the employer ratification requirement. Indeed, PERB did not even modify the requirement during that time. Thus, no one is seeking to apply to Service Employees International Union, Local 199 (SEIU), and the union is not challenging, any PERB action or statutory interpretation made while the express grant was in force.

The majority points to 2015 amendments promulgated by PERB. See 38 Iowa Admin. Bull. 1046, 1048 (Dec. 9, 2015). But, according to PERB, the 2015 changes were “nonsubstantive amendments” to the public *notification* requirement also located in rule 6.4. *Id.* *The 2015 amendment did not modify the employer ratification requirement and did not require statutory interpretation.* Indeed, the 2015 amendments were expressly pursuant to PERB’s rulemaking, not interpretive, authority. *Id.*

Deference is only granted under Iowa Code section 17A.19(10)(l) to an agency action that is both (i) based on statutory interpretation and (ii) prejudicial to the substantial rights of the person seeking judicial relief. The 2015 amendments satisfy neither requirement.

Under the IAPA, we must apply our standard of review “to the agency action at the time that action was taken.” Iowa Code § 17A.19(8)(b). The agency actions at issue in this case occurred during 1975 to 1982, when PERB had no interpretive authority over chapter 20 or the provisions in question. Consequently, no deference is warranted.

Applying our standard of review, I believe PERB’s employer ratification requirement is erroneous and therefore invalid. The requirement is contrary to a public employer’s ability to empower a representative to make a binding offer inherent to the statutory authority to designate a representative to negotiate. *Id.* § 20.17(2). The rule is also contrary to the statutory authorization for the Regents to employ an attorney to “carry[] out collective bargaining and related responsibilities.”

Id. § 262.9(16). Additionally, the rule conflicts with Iowa Code section 20.17(4), which only requires union ratification. We are bound by what the legislature actually said, not what it might have said. *Krull v. Thermogas Co. of Northwood*, 522 N.W.2d 607, 612 (Iowa 1994).

Unlike the majority opinion in this case, I do not believe that the validity of PERB's rule depends on Iowa's open-meetings law. Negotiations are specifically exempted from compliance with the requirements of the open-meetings law. Iowa Code § 20.17(3). Also, the more specific statutory provisions governing collective bargaining in Iowa Code sections 20.17(2)–(4) and 262.9(16) should control over the more general open-meetings law governing myriad agency action in Iowa Code chapter 21. *See id.* § 4.7; *Rilea v. Iowa Dep't of Transp.*, 919 N.W.2d 380, 388 n.6 (Iowa 2018). And besides, the goals of the open-meetings requirement are already accomplished by a requirement to make the collective bargaining agreement public, Iowa Code § 20.17(4); a formalistic ritual to adopt the terms does nothing further.

To be clear, this case does not ask us to determine whether it is inappropriate for a public employer to demand an approval opportunity at an open meeting before a binding collective bargaining agreement may be formed. No one contends that any provision of chapter 20 *requires* an employer to empower a designated representative to make binding offers. Thus, prior collective bargaining negotiations may have involved employer ratification, but the factual circumstances in those historical negotiations do not resolve the legal question before us. The legal question before us is whether an employer *may* empower its designated representative to make binding offers which do not necessitate employer ratification. Sections 20.17(2), 20.17(4), and 262.9(16) say yes, while the administrative rule

says no. Our task is to determine whether the administrative rule is valid, and I do not believe it is.

With a proper understanding of the law governing this case—a public employer may empower a designated representative to make a binding offer in collective bargaining negotiations—we must determine if there is a genuine dispute on whether the Regents’ designated representative, Michael Galloway, made a binding offer. The Regents may not have intended to authorize Galloway to make a binding offer because of their reliance on the invalid rule. But they did not present this argument to the district court. Likewise, the district court did not grant summary judgment on that basis. Instead, the Regents argued, and the district court agreed, that the Regents could not have so authorized Galloway because of the rule. The reasoning presented by the Regents and adopted by the district court falters because the rule was invalid. And since we cannot affirm a grant of summary judgment on a basis that was not presented to and considered by the district court, *see Lamasters v. State*, 821 N.W.2d 856, 864 (Iowa 2012); *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002), I conclude that SEIU should survive summary judgment on this point.

Finally, there are two issues associated with revocation of the January 10 offer after SEIU indicated it agreed to the terms but before the union membership voted to ratify it. The first issue is legal and regards whether a public employer’s collective bargaining negotiator may revoke a binding offer after the union indicates its acceptance but before the union ratifies the proposed agreement. We need not answer that legal question in this case, however, because SEIU survives summary judgment even if the Regents can revoke under such circumstances.

The record shows either that it is undisputed that the Regents did not revoke the offer or, at least, that there is a genuine dispute on whether the Regents revoked. The district court found it undisputed that the January 10 letter was not revoked. In support, the district court noted that SEIU's representative asserted by affidavit that the Regents' representatives did not expressly revoke the January 10 offer, and the Regents' representatives did not dispute the statement in their affidavits.

Even putting aside the Regents' failure to dispute SEIU's assertion, I think a reasonable fact finder could conclude that the Regents' representative did not revoke the January 10 offer. Viewing the record in the light most favorable to SEIU, the nonmoving party, Galloway stated on January 31 that the Regents did not believe the parties had reached an agreement. Whether that statement amounts to a revocation is a factual question that is inappropriate for us to resolve on summary judgment. A reasonable fact finder, it seems to me, could credit SEIU's testimony and thereby believe that Galloway's ambiguous statement only amounted to an indication that the union members had not yet ratified the agreement. Moreover, as the majority opinion in this case points out, Galloway did not expressly revoke the January 10 offer.

Therefore, I would vacate the grant of summary judgment and remand to the district court. Accordingly, I respectfully dissent. Below are the granular details.

II. Whether Iowa Code Chapter 20 Permits a Public Employer's Negotiator to Make a Binding Offer.

The first question we must answer is whether a public employer engaged in collective bargaining can delegate to its designated representative the power to make a binding offer. Prior to the enactment of the Public Employment Relations Act of 1974, 1974 Iowa Acts ch. 1095,

§ 17, the answer to that question may have been no. *See State Bd. of Regents v. United Packing House Food & Allied Workers, Local No. 1258*, 175 N.W.2d 110, 113 (Iowa 1970) (explaining that the Board of Regents can meet with union representatives without improperly delegating legislative powers to private persons because the final decision remains in the Board of Regents); *see also Serv. Emps. Int’l Local No. 55 v. Cedar Rapids Cmty. Sch. Dist.*, 222 N.W.2d 403, 408–09 (Iowa 1974) (stating that as a result of a school district’s long-standing procedure, a union “knew or had reason to know the school board had the ultimate authority and power to accept, reject or modify any and all demands or requests made by the representatives of the Union” and further that “[a]s a matter of fact,” it was “understood . . . that the negotiations with representatives of the School District were only a part of the process by which the school board makes its final policy determination with regard to the wages and working conditions of the custodial and maintenance employees”).

The Public Employment Relations Act of 1974, however, commenced the comprehensive statutory regulation of public employer collective bargaining. *See* Lawrence E. Pope, *Analysis of the Iowa Public Employment Relations Act*, 24 Drake L. Rev. 1, 2 (1974). The Act authorizes a public employer to “designate any individual as its representative to engage in collective bargaining negotiations.” Iowa Code § 20.17(2). That language does not qualify the public employer’s authority to empower a representative in negotiations. The question then becomes whether authority to engage in negotiations includes the authority to make a binding offer.

“Our ultimate goal in interpreting statutes is to determine and give effect to legislative intent.” *Holiday Inns Franchising, Inc. v. Branstad*, 537 N.W.2d 724, 728 (Iowa 1995). “[W]e interpret statutes consistent with

their normal meaning” and refrain from a strained interpretation. *State v. Boggs*, 741 N.W.2d 492, 502 (Iowa 2007).

As discussed below, I believe negotiations can include binding offers. Therefore, the statute allows a public employer to empower its designated representative to make a binding offer.

The term “negotiations” is not defined in chapter 20. See Iowa Code § 20.3. “[W]hen the legislature has not defined a term, we look to the common meaning of that term in interpreting the statute.” *State v. Tesch*, 704 N.W.2d 440, 451 (Iowa 2005). We may refer to prior decisions of this court and others, similar statutes, dictionary definitions, and common usage. *Id.*; *Bernau v. Iowa Dep’t of Transp.*, 580 N.W.2d 757, 761 (Iowa 1998).

The common meaning of negotiate includes the ability to make a binding offer. According to *Webster’s*, the term “negotiate” means “to communicate or confer with another so as to arrive at the settlement of some matter” and to “meet with another so as to arrive through discussion at some kind of agreement or compromise about something.” *Negotiate*, *Webster’s*. Similarly, *Black’s* defines “negotiation” as “[a] consensual bargaining process in which the parties attempt to reach agreement on a disputed or potentially disputed matter. Negotiation usu[ally] involves complete autonomy for the parties involved, without the intervention of third parties.” *Negotiation*, *Black’s Law Dictionary* (10th ed. 2014). Those definitions connote an ability to make a binding offer, because otherwise, negotiating would not arrive at settlement or compromise. More pointedly, the definitions do not exclude binding offers.

That natural meaning of negotiations—as including, or not excluding, the ability to make a binding offer—is corroborated by other jurisdictions’ understanding of the term. “[T]he word ‘negotiating’ . . . is a

general word coming to us from the Latin, and signifying to carry on negotiations concerning and so to conduct business, *to conclude a contract*, or to transfer or arrange.” *Newport Nat’l Bank v. Bd. of Educ.*, 70 S.W. 186, 186 (Ky. Ct. App. 1902) (emphasis added). “The word ‘negotiate’ does not merely mean haggling over and changing contract terms. To negotiate also means to ‘procure agreement’ by means of discussion.” *Abbate v. Abbate*, 441 N.Y.S.2d 506, 516 (App. Div. 1981). “Where, as here, certain terms have been established which would result in settlement, negotiate means more than merely talking to the opposing party. It means to settle if the specified terms have been met.” *Shields v. Keystone Cogeneration Sys., Inc.*, 620 A.2d 1331, 1334 (Del. Super. Ct. 1992). “Negotiations occur only where there exists an opportunity for an offeror to modify or revise its proposal.” *Drexel Heritage Furnishings, Inc. v. United States*, 7 Cl. Ct. 134, 154 (Cl. Ct. 1984). A federal regulator defined the term “negotiations” as “a series of offers and counter-offers until a mutually satisfactory agreement is concluded by the parties.” *Airco, Inc. v. Energy Research & Dev. Admin.*, 528 F.2d 1294, 1298 (7th Cir. 1975) (quoting *To Murray Schaffer*, 51 Comp. Gen. 479, 480 (1972)). An Oklahoma court believes that the ordinary meaning of negotiate

is to “bargain with another respecting a purchase and sale” . . . in an effort to consummate a sale. In other words there must be conduct that places one in the position of bargaining with a party to settle the terms . . . ordinarily on behalf of one party or the other.

Loyd v. Saffa, 719 P.2d 844, 847 (Okla. Ct. App. 1986) (quoting *Black’s Law Dictionary* 934 (5th ed. 1979)), *overruled on other grounds by Commodore Home Sys., Inc. v. Citicorp Acceptance Co.*, 780 P.2d 674, 678 (Okla. 1989). The Maine Supreme Judicial Court explained that unless extrinsic evidence suggests a contrary meaning, “the term ‘negotiating’ . . .

means a dialogue aimed at the adjustment or resolution of differences in order to strike a bargain.” *Gendron Realty, Inc. v. N.J. Gendron Lumber Co.*, 519 A.2d 723, 725 (Me. 1987). Missouri utilizes the following dictionary definition of negotiate: “to communicate or confer with another so as to arrive at the settlement of some matter.” *Wenzel v. Holland-Am. Ins. Co. Tr.*, 13 S.W.3d 643, 646 (Mo. 2000) (en banc) (quoting *Webster’s Third New International Dictionary* 1514 (1961)). In Colorado, “as it pertains to [real estate] licensing, the term ‘negotiate’ includes the act of bringing two parties together for the purpose of consummating a real estate transaction.” *Brakhage v. Georgetown Assocs., Inc.*, 523 P.2d 145, 147 (Colo. App. 1974).

The meaning of negotiations in section 20.17(2) may also be ascertained by other provisions in chapter 20. *State v. Kamber*, 737 N.W.2d 297, 299 (Iowa 2007) (stating that “a statute is interpreted as an integrated whole”). We have frequently said that “[w]hen the same term appears multiple times in the same statute, it should have the same meaning.” See, e.g., *State v. Paye*, 865 N.W.2d 1, 7 (Iowa 2015); see also *Carson v. Roediger*, 513 N.W.2d 713, 716 (Iowa 1994) (same).

The use of the term “negotiations” elsewhere in Iowa Code chapter 20 demonstrates a legislative intent to allow a public employer’s representative to make a binding offer on behalf of the employer during negotiations. The definition of “impasse” is “the failure of a public employer and the employee organization to reach agreement in the course of negotiations.” Iowa Code § 20.3(6); see also *Austin v. Kelley*, 88-HO-3475, at 9 (Nov. 16, 1988)⁹ (concluding that impasse procedures are part

⁹Available at [https://www.iowaperb.org/Document?db=IOWA-STATE-PERBS&query=\(select+0+\(byhits+\(eq+ISSUANCE_DATE+%601988%2F11%2F16\)\)\)](https://www.iowaperb.org/Document?db=IOWA-STATE-PERBS&query=(select+0+(byhits+(eq+ISSUANCE_DATE+%601988%2F11%2F16)))) [https://perma.cc/4LTC-SCNN].

of the negotiation process). Thus, an agreement can be reached during, or “in the course of,” negotiations. The ability to reach an agreement during negotiations implies the ability to make a binding offer during negotiations. It certainly does not exclude such ability.¹⁰

There is no reason to believe that the meaning of negotiations in the definition of impasse or in other provisions of chapter 20 is different from the meaning of negotiations in Iowa Code section 20.17(2). Thus, we

¹⁰There are two other provisions in chapter 20 that suggest the term “negotiations” includes the ability to reach agreement and, therefore, the ability to make a binding offer. In section 20.9, the legislature designates the mandatory, permissive, and excluded matters in the scope of negotiations. Iowa Code § 20.9. If negotiations only means discussions prior to a binding offer or agreement, the intent of section 20.9 would be thwarted because the final agreement could include matters that are excluded from the scope of negotiations. The more natural understanding of negotiations, once again, includes a binding offer. This understanding also comports with our caselaw. For instance, in *City of Mason City v. Public Employment Relations Board*, 316 N.W.2d 851, 854 (Iowa 1982), we said that the legislature excluded pensions from the scope of negotiations because “it is felt that significant matters of governmental policy, which pensions would seem to be from sheer cost alone, should remain outside the scope of negotiation so that citizen participation will not be precluded.”

In another section, chapter 20 authorizes negotiations in a manner that would be futile if the meaning of the term “negotiations” did not include the ability to make a binding agreement. Iowa Code section 20.15(6)(c) states that collective bargaining agreements “shall be for two years” and “[t]he effective date of any such agreement shall be July 1 of odd-numbered years,” but if a union’s

exclusive bargaining representative is certified on a date which will prevent the negotiation of a collective bargaining agreement prior to July 1 of odd-numbered years for a period of two years, the certified collective bargaining representative may negotiate a one-year contract with the public employer which shall be effective from July 1 of the even-numbered year to July 1 of the succeeding odd-numbered year when new agreements shall become effective.

Iowa Code § 20.15(6)(c). If negotiations only meant discussions without the ability to enter a binding agreement, the exception for one-year contracts in even-numbered years would be ineffectual. This is because the union and public employer would be able to discuss a one-year agreement for an even-numbered year, but they would be unable to enter the agreement because collective bargaining agreements “shall be for two years” and must take effect on July 1 of odd-numbered years. *Id.* The clear intent of the quoted exception is to allow the parties to reach a one-year agreement taking effect in an even-numbered year. And to effectuate that intent, the legislature used the term “negotiate.” Thus, in section 20.15(6)(c), negotiate includes the ability to propose a binding offer.

should apply a consistent meaning. *Paye*, 865 N.W.2d at 7; *Carson*, 513 N.W.2d at 716.

Further, and perhaps most strikingly, Iowa Code chapter 20 imposes no preconditions on an employer to finalize a collective bargaining agreement. This must be contrasted with the statutory conditions imposed on a union, which is statutorily required to ratify an agreement by a majority of secret balloters. Iowa Code § 20.17(4). The absence in the statutory requirement for employer ratification is meaningful because we are bound by what the legislature actually said, not what it might have said. *Krull*, 522 N.W.2d at 612.

Finally, it is notable that the Iowa Code specifically allows the Regents “discretion [to] employ or retain attorneys or counselors when acting as a public employer for the purpose of carrying out collective bargaining and related responsibilities provided for under chapter 20.” Iowa Code § 262.9(16). To carry out means “to bring to a successful issue,” “to put into execution,” and “to continue to an end or stopping point.” *Carry out*, *Webster’s*. By allowing an attorney to “carry[] out collective bargaining and related responsibilities” for the Regents, the legislature permits the Regents to empower a negotiator at least as much, if not more so, as public employers are generally permitted to do under section 20.17(2).

In sum, section 20.17(2) permits the public employer to designate a representative to make a binding offer. Section 262.9(16) further corroborates that the Regents have such authority. The statutory provisions show a clear expression and implication that, to the extent the law prior to enactment of the Public Employment Relations Act did not permit a public employer to authorize a representative to make a binding offer, the legislature changed the law. *Hines v. Ill. Cent. Gulf R.R.*, 330

N.W.2d 284, 289 (Iowa 1983). We must next determine whether PERB's rule withstands scrutiny in light of that statutory interpretation.

III. Whether PERB's Rule Is Valid.

A. Introduction. PERB has a rule imposing a ratification requirement on the public employer before a "tentative" collective bargaining agreement may take effect. The version of PERB's rule in effect during the parties' collective bargaining discussions stated,

Acceptance or rejection by public employer. The public employer shall, within ten days of the tentative agreement, likewise meet to accept or reject the agreement, and shall within 24 hours of the acceptance or rejection serve notice on the employee organization of its acceptance or rejection of the proposed agreement; however, the public employer shall not be required to either accept or reject the tentative agreement if it has been rejected by the employee organization.

Iowa Admin. Code r. 621—6.4(3).

The district court held that PERB's employer ratification requirement prevented the formation of a collective bargaining agreement because the Regents did not ratify the tentative agreement reached by the parties' representatives and approved by SEIU's membership. In response to a challenge to the rule's validity from SEIU, the district court found the rule valid because it "merely spells out when and how" a public employer is to "meet before voting on any action within the scope of its duties" under Iowa's open-meetings law.

SEIU reiterates before us its challenge to the validity of PERB's rule. "A party aggrieved by application of an administrative rule may challenge [the rule's] validity in an independent action where the rule is sought to be applied." *Jew v. Univ. of Iowa*, 398 N.W.2d 861, 864 (Iowa 1987).

The majority opinion in this case holds, consistent with the district court, that PERB's rule applies to this case, and in light of Iowa's open-meetings law, is valid. And since the administrative rule requires a public

employer to meet to accept a tentative agreement before a collective bargaining agreement can be formed, the opinion concludes that the Regents could not delegate authority to the designated representative to make a binding offer.

The decisional law on PERB's employer ratification requirement is sparse and consists of mere characterizations of the rule made in dicta. In *Moravia Community School District v. Moravia Education Association*, 460 N.W.2d 172, 178 (Iowa Ct. App. 1990), the court of appeals observed that the rule gives both the public employer and union the right to accept or reject the tentative agreement. Likewise, a PERB hearing officer has explained that "Rule 6.4 . . . essentially provides for a procedure whereby labor and management must ratify the terms of a proposed or 'tentative' collective bargaining agreement." *Local Union 2003, I.B.P.A.T. & Lyon County*, 80-HO-2013, at 3 (Oct. 30, 1981).¹¹ Another PERB hearing officer stated that, pursuant to the rule, a public employer always has an obligation to accept or reject the tentative agreement reached by its negotiating team. *AFSCME, AFL-CIO, Local No. 888 & City of Clinton*, 77-HO-838, at 8 n.10 (Feb. 18, 1977).¹² No Iowa appellate court has examined the validity of PERB's employer ratification requirement. Indeed, no reported judicial decision even turns on the employer ratification requirement. In short, this is a case of first impression.

In deciding whether PERB's rule is valid, I begin by determining the appropriate standard of review. Following that determination, I apply the

¹¹Available at [https://iowaperb.org/Document?db=IOWA-STATE-PERBS&query=\(select+0+\(byhits+\(eq+ISSUANCE_DATE+%601981%2F10%2F30\)\)\)](https://iowaperb.org/Document?db=IOWA-STATE-PERBS&query=(select+0+(byhits+(eq+ISSUANCE_DATE+%601981%2F10%2F30)))) [https://perma.cc/3J4E-GGD6].

¹²Available at [https://www.iowaperb.org/Document?db=IOWA-STATE-PERBS&query=\(select+1+\(byhits+\(eq+ISSUANCE_DATE+%601977%2F02%2F18\)\)\)](https://www.iowaperb.org/Document?db=IOWA-STATE-PERBS&query=(select+1+(byhits+(eq+ISSUANCE_DATE+%601977%2F02%2F18)))) [https://perma.cc/552K-QXCG].

standard to PERB's rule. Finally, I evaluate the purported relevance of Iowa's open-meetings law to the validity of PERB's rule.

B. Standard of Review.

1. *Overview.* An agency has only the authority or discretion delegated by law. Iowa Code § 17A.23(3). An agency cannot expand or enlarge its authority or discretion beyond the powers delegated to it. *Id.* And a grant of rulemaking authority is construed narrowly unless specifically provided in statute. *Id.*

Where agency action is based on statutory interpretation, our standard of review depends on whether the legislature has clearly vested in the agency the authority to interpret the statutory provision. *Id.* § 17A.19(10)(c), (l). If the legislature has so vested interpretive authority, we determine whether the interpretation is “irrational, illogical, or wholly unjustifiable.” *Id.* § 17A.19(10)(l). If the legislature has not clearly vested interpretive authority in the agency to interpret the provision, we determine whether the agency's interpretation is “erroneous.” *Id.* § 17A.19(10)(c). In the latter situation, our standard of review is for corrections of error at law and we are free to substitute our interpretation of the statute de novo. *Tremel v. Iowa Dep't of Revenue*, 785 N.W.2d 690, 692–93 (Iowa 2010). As is apparent, an agency interpretation is entitled to a greater amount of deference when the legislature has vested the agency with interpretive authority.

The Iowa approach to reviewing agencies' statutory interpretation is based on the following rationale:

It would be improper for a court to simply substitute, without any deference to the agency's view, the court's own view of the meaning of a statutory term that the General Assembly had clearly delegated to the discretion of any agency to elaborate, because in that situation the court would be

violating the statute delegating that discretionary authority to the agency.

Arthur E. Bonfield, *Amendments to Iowa Administrative Procedure Act, Report on Selected Provisions to Iowa State Bar Association and Iowa State Government* 63 (1998) [hereinafter Bonfield]. See generally Cary Coglianese, *Chevron’s Interstitial Steps*, 85 Geo. Wash. L. Rev. 1339, 1349 (2017) (“[A] court doing anything other than deferring would be failing to honor the law itself, as these statutes expressly give the agencies the responsibility to define pertinent statutory terms.”). That rationale is an instance of the “faithful agent” theory of the judiciary’s role in statutory interpretation. Rooted in the constitutional separation of powers, the faithful agent theory holds that judges should give effect to the legislature’s intent because the constitutional power to make law is located in the legislature. See Valerie C. Brannon, Cong. Research Serv., R45153, *Statutory Interpretation: Theories, Tools, and Trends* 4–5 (2018), <https://fas.org/sgp/crs/misc/R45153.pdf>.

The legislature may clearly vest interpretive authority in two ways. *Renda*, 784 N.W.2d at 11–14. One way is through an express grant of interpretive authority. *Id.* at 11. An express grant of interpretive authority occurs when the legislature “explicitly address[es] in legislation the extent to which an agency is authorized to interpret a statute.” *Id.* For instance, in *Iowa Association of School Boards v. Iowa Department of Education*, 739 N.W.2d 303, 307 (Iowa 2007) (quoting Iowa Code § 256.9(16) (2003)), we noted that the department of education’s enabling statute stated that “the director ‘shall . . . [i]nterpret the school laws and rules relating to the school laws.’”

In addition, even in the absence of an express grant, the legislature may clearly vest in an agency the authority to interpret certain statutory

phrases or provisions. *Renda*, 784 N.W.2d at 11–14; see *Bonfield* at 63. This is based on the recognition that the IAPA’s use of the term “clearly” is less restrictive than the term “expressly.” *Renda*, 784 N.W.2d at 11. Under this mode of analysis, broad articulations concerning agency authority are avoided; instead, the focus is on the particular statutory phrase or provision at issue in a given case. *Renda*, 784 N.W.2d at 11–14. For example, in *Andover Volunteer Fire Department v. Grinnell Mutual Reinsurance*, 787 N.W.2d 75, 80 (Iowa 2010), we determined that the legislature did not intend to grant the workers’ compensation commissioner the authority to interpret the statutory phrase “summoned to duty.”

Therefore, to determine whether the legislature has clearly vested PERB with interpretive authority relevant to the question before us, we must consider both express and implicit vesting of interpretive authority. I first address express authority.

2. *Express vesting of interpretive authority.* In *State v. Public Employment Relations Board*, 744 N.W.2d 357, 360 (Iowa 2008), we considered whether PERB was granted interpretive discretion with respect to Iowa Code chapter 20 by examining the powers vested in the agency. We noted that the statute provided that

[t]he general assembly declares that the purposes of the public employment relations board established by this chapter are to *implement* the provisions of this chapter and *adjudicate* and *conciliate* employment-related cases involving the state of Iowa and other public employers and employee organizations.

Id. (quoting Iowa Code § 20.1 (2001)). We also observed that the statute listed numerous powers and duties of PERB, including that PERB shall “[a]dminister the provisions [of this chapter]” and “adopt rules ‘to carry out the purposes of this chapter.’ ” *Id.* (quoting Iowa Code §§ 20.1, .6 (2007)).

We concluded that “[w]hile it is obvious the legislature has afforded PERB extensive powers to implement and administer the provisions of chapter 20, it is not clear that the legislature intended to delegate interpretive powers to PERB.” *Id.* We therefore reviewed PERB’s statutory interpretation under the less deferential standard under Iowa Code section 17A.19(10)(c). *Id.*

Our analysis in *Public Employment Relations Board* predated the distinction between express and implicit vesting of interpretive authority explicated in *Renda*, 784 N.W.2d at 11–14. We did not use *Renda*’s phraseology or analytical approach. *See Pub. Emp’t Relations Bd.*, 744 N.W.2d at 360. Instead, we broadly considered whether the agency had interpretive authority over the entirety of chapter 20 by virtue of the powers vested in the agency and did not consider whether the statutory phrases or provisions at issue in the case clearly vested interpretive authority in the agency. *See id.* Therefore, the precedential value of the decision is limited to this: the provisions we examined do not constitute an express grant of interpretive authority over the entirety of chapter 20.

We employed a similar analytical approach in *Waterloo Education Association v. Iowa Public Employment Relations Board*, 740 N.W.2d 418, 419–20 (Iowa 2007). We explained that because the interpretive question of whether a proposal is a mandatory subject of collective bargaining was not “explicitly” vested in PERB’s discretion, our review was for correction of errors at law. *Id.* at 420.

Following those decisions, in 2010, the legislature expressly vested in PERB interpretive authority over chapter 20. 2010 Iowa Acts ch. 1165, § 6 (codified at Iowa Code § 20.6(1) (2011)). No longer was PERB only instructed to “[a]dminister” chapter 20; the new provision stated that “[PERB] shall . . . [i]nterpret, apply, and administer the provisions of this

chapter.” Iowa Code § 20.6(1) (2011). The legislature withdrew that authority on February 17, 2017. 2017 Iowa Acts ch. 2, § 2 (codified at Iowa Code § 20.6(1) (2018)).

The majority opinion in this case would defer to PERB’s interpretation of Iowa Code chapter 20 as to its statutory authority to promulgate rule 621—6.4(3) because of the legislature’s 2010 express grant of interpretive authority. The reasoning, however, is unsound.

There are three problems with relying on the 2010 express grant to defer to PERB. First, an express grant of interpretive authority is not relevant to our standard of review if it did not “appl[y] to the agency action at the time that action was taken.” Iowa Code § 17A.19(8)(b) (2017). Consequently, an express grant of interpretive authority postdating an agency action based on interpretation is not a reason to defer to the agency interpretation. Second, even if one were to interpret the section 17A.19(8)(b) requirement to permit for retroactive application of an express grant of interpretive authority, there is no indication of legislative intent to make the 2010 express grant retroactive. Third, if the 2010 express grant is viewed as retroactive, the same view should be taken on the 2017 withdrawal of express interpretive authority.

For purposes of brevity, I focus on the first proposition. The relevant question for determining our standard of review is not whether an agency has ever been granted interpretive authority, or even whether the Iowa statutes generally applicable during the factual circumstances of a particular case would grant interpretive authority to an agency that takes action during that time. Instead, the relevant question is whether the agency action challenged by the aggrieved party is based on an interpretation made by the agency *while it had interpretive authority*.

The IAPA, I think, mandates this approach. The IAPA instructs the court to “reverse . . . agency action” under a host of conditions, two of which concern agency action based on statutory interpretation. *See id.* § 17A.19(10)(c), (l). As noted above, the distinction between the two provisions is whether interpretation of the statutory provision in question has “clearly been vested by a provision of law in the discretion of the agency.” *Id.* I acknowledge that, standing alone, those IAPA sections could be read as requiring deference to an agency interpretation if, *at any time*, interpretive authority has “clearly been vested by a provision of law in the discretion of the agency.” But that reading is foreclosed by a neighboring provision of section 17A.19.

Section 17A.19(8)(b) instructs that “[t]he validity of agency action must be determined in accordance with the standards of review provided in this section, *as applied to the agency action at the time that action was taken.*” *Id.* § 17A.19(8)(b) (emphasis added). Pursuant to section 17A.19(8)(b), we must apply our standard of review to the circumstances existing when the agency took action. *See Brummer*, 661 N.W.2d at 168 n.1 (Iowa 2003) (explaining that under section 17A.19(8)(b), “we must focus on the agency’s actions during the time period in which” the agency took the action challenged by appellant). Thus, in order for an agency interpretation to be granted deference, the IAPA requires a temporal identity between interpretive authority and the agency action based on statutory interpretation.

Moreover, the grammatical subject at issue in Iowa Code section 17A.19(10) is “agency action.” The IAPA thus instructs us to review the circumstances of that action. There is no suggestion in the IAPA that agency action may be somehow temporally disconnected from, or not an exercise of, a clear vesting of interpretive authority. Similarly, the statute

is silent on the notion that there may be a temporal disconnect between the provision of law interpreted and the provision of law vesting the agency with interpretive authority.

Consider our deference rules in practice. Suppose an agency takes final action based on its interpretation of a statute. Later, the legislature expressly vests the agency with interpretive authority and, afterwards, a case challenging the agency action comes before us. Then, the legislature withdraws the express grant of interpretive authority, and another case comes before us involving a challenge to the same agency action. Would we apply a different standard of review to the same agency action in the two cases? The IAPA answers that problem in telling us to review “agency action,” not later circumstances, and, even more specifically, “agency action at the time that action was taken.” *Id.* § 17A.19(8)(b), (10).

Additionally, the temporal identity requirement is consistent with the rationale for deferring to agency interpretations. As explained above, the rationale for deference is based on the notion that if the legislature delegates discretionary authority to an agency to interpret a statutory term, the court would violate that legislative choice were it to substitute its own view of the proper interpretation without any deference to the agency. *Bonfield* at 63. By the same token, where an interpretation predates an express grant of interpretive authority, the court honors the prior legislative choice to not grant interpretive authority by refusing to defer. Moreover, the rationale is premised on the notion that the agency actually exercises its express interpretive authority, something which would be impossible for an agency that acted before the express grant was in existence.

Our precedent also demands a temporal identity between interpretation and interpretive authority. Under the IAPA, we have

explained that “[o]ur standard of review depends on the aspect of the agency’s decision that forms the basis of the petition for judicial review.” *Simon Seeding & Sod, Inc. v. Dubuque Human Rights Comm’n*, 895 N.W.2d 446, 455 (Iowa 2017) (quoting *Burton v. Hilltop Care Ctr.*, 813 N.W.2d 250, 256 (Iowa 2012)). So, where an agency’s statutory interpretation forms the basis of the challenge to the agency action, our standard of review depends on that interpretation. Requiring a temporal identity between the agency’s interpretation and the existence or nonexistence of clearly vested interpretive authority ensures that our standard of review depends on the interpretation. Without such a requirement for temporal identity, our standard of review would instead depend on an unbridled rifling through past and present statutes to uncover any express delegation of interpretive authority.

Further, an agency has only the authority or discretion delegated by law. Iowa Code § 17A.23(3); see *Brakke v. Iowa Dep’t of Nat. Res.*, 897 N.W.2d 522, 533 (Iowa 2017) (“The power of the agency is limited to the power granted by statute.”). The provision codifies the law that an agency “may not exercise any authority outside the scope of that lawfully delegated authority.” *Bonfield* at 73. A retroactive delegation of interpretive authority conflicts with that provision because it would allow an agency to act with interpretive authority it lacks at the time of action. If at all possible, we harmonize apparent conflicts among statutes. *Papillon v. Jones*, 892 N.W.2d 763, 773 (Iowa 2017).

For similar reasons, a retroactive delegation of interpretive authority could present separation of powers problems. We interpret statutes to avoid constitutional problems. *In re Guardianship of Kennedy*, 845 N.W.2d 707, 711–14 (Iowa 2014). Our constitution provides for a separation of powers in stating that “no person charged with the exercise of powers

properly belonging to [either the legislative, executive, or judicial department] shall exercise any function appertaining to either of the others.” Iowa Const. art. III, § 1. Thus, an agency cannot exercise a nondelegated lawmaking power held by the legislature or judicial branch. When the express delegation is not in existence, the agency does not act with its power. *See City of Arlington v. Fed. Commc’ns Comm’n*, 569 U.S. 290, 312, 133 S. Ct. 1863, 1877 (2013) (Roberts, C.J., dissenting) (“An agency cannot exercise interpretive authority until it has it”). A retroactive delegation of interpretive power would seem to violate the constitutional requirement of separation of powers because, at the time the agency acted, it lacked interpretive power.

This approach appears to be consistent with federal law. The Supreme Court recognizes that Congress may explicitly or implicitly leave a gap for the agency to fill. *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 843–44, 104 S. Ct. 2778, 2782 (1984). “If Congress has explicitly left a gap for the agency to fill, there is an express delegation of authority to the agency to elucidate a specific provision of the statute by regulation.” *Id.* In such circumstances, “any *ensuing* regulation” is entitled to deference. *United States v. Mead Corp.*, 533 U.S. 218, 227, 121 S. Ct. 2164, 2171 (2001) (emphasis added). By its use of the word “ensuing,” the Court suggests that regulations entitled to deference are those which occur after or as a result of the explicit delegation. And the Court’s decisions bear out that deference is accorded agency actions taken pursuant to an express delegation. *See, e.g., Atkins v. Rivera*, 477 U.S. 154, 162, 106 S. Ct. 2456, 2461 (1986) (“Because the Secretary’s regulation . . . is adopted pursuant to the explicit grant of rulemaking authority . . . it is ‘entitled to more than mere deference or weight.’” (quoting *Schweiker v. Gray Panthers*, 453 U.S. 34, 44, 101 S. Ct. 2633,

2640 (1981)); *see also Rodriguez v. Sec’y of Health & Human Servs.*, 856 F.2d 338, 341 (1st Cir. 1988) (“The Secretary’s rules governing maximum fees are . . . made pursuant to an explicit statutory delegation. They have, therefore, ‘legislative effect.’ ” (quoting *Hogan v. Heckler*, 769 F.2d 886, 888 (1st Cir. 1985))).

In addition, the reason for refusing to defer here is consistent with the majority opinion released today in *United Electrical, Radio & Machine Workers of America v. Iowa Public Employment Relations Board*, 928 N.W.2d 101 (Iowa 2019). There, the majority holds that it would not employ the express delegation theory to defer to an agency interpretation made after the legislature withdrew express interpretive authority from the agency’s organic statute. *Id.* at 108. Conversely, is there a reason to defer to an agency interpretation that preceded an express delegation of interpretive authority? The answer to this question, I think, must also be no. Underlying the answer to both scenarios is the notion that the legislature has reserved the right to delegate the authority held by administrative agencies. Iowa Code § 17A.23(3). We should not subvert the legislature’s choice.

Therefore, we should interpret Iowa Code section 17A.19(10)(c), (l) as requiring a temporal identity between an agency action based on statutory interpretation and interpretive authority vested by a provision of law.

3. *No express grant of interpretive authority applied when PERB interpreted chapter 20 to enact or modify its employer ratification requirement.* PERB’s rule was initially promulgated in 1975. *See* Iowa Admin. Code r. 660—6.4 (1975). At that time, the rule stated that the public employer’s governing body must accept or reject a proposed

agreement but only after a majority of voting members of the employee union supported ratification of the agreement. *See id.*

PERB substantively modified its rule a few times in the seven years after 1975. Just one year after initially promulgating the rule, PERB changed the rule to only require that “[t]he public employer shall serve notice on the employee organization of its acceptance or rejection of the proposed agreement.” *See id.* r. 660—6.4 (Supp. Sept. 22, 1976). That language removed the conditions that the union ratify the agreement before the employer does so and that acceptance be done by the employer’s governing body. *See id.* Then, in 1979, PERB reinserted the requirement for the public employer to wait until the union membership ratifies the agreement before meeting to accept or reject the agreement. *See id.* r. 660—6.4 (Supp. Oct. 3, 1979). Finally, in 1982, PERB again removed the waiting requirement and provided that, while a public employer had to meet to approve or reject a tentative agreement, it need not do so if the tentative agreement had already been rejected by the union membership. *See id.* r. 660—6.4 (Supp. Nov. 10, 1982).

PERB’s initial rule and the three modifications between 1976 and 1982 are based on interpretations of the statute. At the time, just as it did during the parties’ negotiations from 2016 to 2017, chapter 20 authorized a public employer to designate an individual to engage in collective bargaining negotiations, *see* Iowa Code § 20.17(2) (1975), and the only express ratification requirement applied to public employees, *see id.* § 20.17(4). Since PERB’s employer ratification requirement and associated waiting period are not found on the face of the statute, they necessarily involve statutory interpretations.

Meanwhile, from 1975 to 1982, PERB did not have express interpretive authority over chapter 20. PERB’s powers and duties were the

same as, or fewer than, those we found to not grant interpretive authority in *Public Employment Relations Board*, 744 N.W.2d at 360. See Iowa Code § 20.6 (1975) (providing the board shall “[a]dminister the provisions of this chapter”). Moreover, of course, the express delegation of interpretive authority granted in 2010 was not in existence in 1975. Therefore, when it promulgated and amended its rule in 1975 and through 1982, PERB was not clearly vested with interpretive authority by an express provision. PERB’s employer ratification requirement has not been substantively changed since 1982.

In 2015, PERB made “nonsubstantive amendments” to the public *notification* requirements also located in rule 6.4. 38 Iowa Admin. Bulletin 1046, 1046 (Dec. 9, 2015). PERB added the following clarifying phrase, indicated in italics, to the notification requirement:

The public employer shall, within ten days of the tentative agreement, likewise meet to accept or reject the agreement, and shall within 24 hours *of the acceptance or rejection* serve notice on the employee organization of its acceptance or rejection of the proposed agreement”

Id. at 1048. *That amendment does not modify the employer ratification requirement.* Moreover, the amendment did not interpret the statutory authority to designate a representative to engage in negotiations in Iowa Code section 20.17(2) or the statutory ratification requirements in Iowa Code section 20.17(4). It is simply, as PERB itself put it, a “nonsubstantive” change to clarify PERB’s notification requirement. *Id.* at 1046. And, the amendment was made pursuant to PERB’s rulemaking authority under Iowa Code section 20.6(5), not its interpretive authority. *Id.*

The majority, therefore, is wrong to assert that we should defer to PERB’s rule because, according to the majority, PERB’s 2015 amendments

“necessarily construed” chapter 20. Under the majority’s approach, any administrative action would merit deference under Iowa Code section 17A.19(10)(l) so long as an express delegation of interpretive authority existed at the time. That cannot be right. Deference is only granted under section 17A.19(10)(l) to an agency action that is (i) based on statutory interpretation and (ii) prejudicial to the substantial rights of the person seeking judicial relief. The 2015 amendments are neither.

Consequently, the agency action involved in this case is based on an interpretation of Iowa Code chapter 20 by an agency that was not clearly vested with interpretive authority by an express grant of authority. As such, unless PERB has implicit interpretive authority over Iowa Code section 20.17(2), (4), our review is for correction of errors at law. Iowa Code § 17A.19(10)(c).

4. *Implicit vesting of interpretive authority.* As noted above, the legislature may clearly vest interpretive authority even if there is no express grant of interpretive authority. *Renda*, 784 N.W.2d at 11–14. In evaluating whether the agency has implicit interpretive authority, the focus is on the particular statutory phrase or provision at issue in a given case. *Id.* at 11–14. “[B]road articulations of an agency’s authority, or lack of authority, should be avoided in the absence of an express grant of broad interpretive authority.” *Id.* at 14.

To determine that the legislature has clearly vested interpretive authority in the absence of an express grant, we must be “firmly convinced that ‘the legislature actually intended (or would have intended had it thought about the question) to delegate to the agency interpretive power with the binding force of law over the elaboration’ of the terms.” *Id.* at 14 (quoting *Bonfield* at 63). The “clearly been vested” requirement is more stringent than the view that federal law affords deference to an agency

interpretation when the language of a statute does not clearly and unambiguously answer a particular question. *Bonfield* at 63. We must examine the phrases or statutory provisions to be interpreted, their context, the purpose of the statute, the functions of and duties imposed on the agency, and other practical considerations to determine whether the legislature intended to give interpretive authority to an agency. *Renda*, 784 N.W.2d at 11–12.

When the statutory provision being interpreted is a substantive term within the special expertise of the agency, we have concluded that the agency has been vested with the authority to interpret the provision. *Id.* at 14 (collecting cases). For instance, in *Evercom Systems, Inc. v. Iowa Utilities Board*, 805 N.W.2d 758, 762–63 (Iowa 2011), we found the utilities board had been vested with authority to interpret the statutory phrase “unauthorized change in service” because it was a substantive term within the special expertise of the agency. We are also more likely to defer to an agency interpretation when the agency necessarily must interpret the statutory language at issue in carrying out its duties, but that basis standing alone is unlikely to be sufficient to warrant deference. *See Ramirez-Trujillo v. Quality Egg, L.L.C.*, 878 N.W.2d 759, 769–70 (Iowa 2016); *Iowa Ins. Inst. v. Core Grp. of Iowa Ass’n for Justice*, 867 N.W.2d 58, 65, 77 (Iowa 2015).

On the other hand, when provisions to be interpreted are found in a statute other than the statute the agency has been tasked with enforcing, or where a term has an independent legal definition that is not uniquely within the subject matter expertise of the agency, we conclude the agency has not been vested with interpretative authority. *Banilla Games, Inc. v. Iowa Dep’t of Inspections & Appeals*, 919 N.W.2d 6, 12–13 (Iowa 2018); *Renda*, 784 N.W.2d at 14 (collecting cases). Similarly, we refuse to find

interpretive authority over statutory language that is not complex or specialized, or which does not appear on its face to be technical. See *Banilla Games*, 919 N.W.2d at 13; *Irving v. Emp’t Appeal Bd.*, 883 N.W.2d 179, 185 (Iowa 2016).

For instance, in *Renda*, we concluded that the Iowa Civil Rights Commission did not have interpretive authority over the terms “employee” and “dwelling.” 784 N.W.2d at 14. Our analysis turned on the facts that both terms have specialized legal meaning, are widely used in areas of law other than the civil rights arena, and required for their interpretation the agency to consider provisions of law in other statutes. *Id.* Likewise, in *Neal v. Annett Holdings, Inc.*, 814 N.W.2d 512, 519 (Iowa 2012), we decided that because the phrase “suitable work” is found in other legal contexts and has a specialized legal meaning extending beyond the context presented in the case, we would not defer to the commissioner’s interpretation of the phrase in the workers’ compensation statute. In *Simon Seeding & Sod*, we held that the Dubuque Human Rights Commission was not entitled to deference for its interpretation of the phrase “regularly employs” because the phrase “is not a specialized term of art requiring the agency’s unique expertise to apply” and “is used in other Iowa statutes.” 895 N.W.2d at 455–56. And in *Bluml v. Dee Jay’s Inc.*, 920 N.W.2d 82, 84 (Iowa 2018), we explained that the phrase “aris[es] out of . . . employment” is not technical or within the special expertise of the workers’ compensation commissioner.

We have also been clear that rulemaking authority is not a conclusive determination of interpretive authority. Our precedent is replete with instances where we have determined that an agency was not clearly vested with interpretive authority despite the presence of rulemaking authority. See *Iowa Dental Ass’n v. Iowa Ins. Div.*, 831 N.W.2d

138, 143–44 (Iowa 2013) (collecting cases); *Renda*, 784 N.W.2d at 12–13 (same). As we said in *Iowa Dental*, “[G]ranting the authority to make rules for enforcement purposes is not the same as granting authority to make interpretive rules.” 831 N.W.2d at 144; *accord Rilea*, 919 N.W.2d at 385.

To my mind, the legislature has not implicitly granted PERB interpretive authority over the designated negotiator provisions in Iowa Code section 20.17(2) or the union ratification requirements in Iowa Code section 20.17(4).

Negotiations are a subject that cuts across many areas of statutory law.¹³ Even more specifically, other statutory provisions concern a person’s authority to designate a negotiator to act on her behalf. *See, e.g.*, Iowa Code § 9A.102(1) (providing that a student athlete may authorize a person to negotiate a professional sports or endorsement contract on the student’s behalf). Similarly, while the Iowa Code provides that the department of administrative services negotiates collective bargaining agreements for other agencies, the Regents’ authority to negotiate collective bargaining agreements is distinguished. *Id.* § 8A.402(1)(g). Negotiations are also an issue that courts have developed in the common law of contracts. *See, e.g., In re Marriage of Masterson*, 453 N.W.2d 650, 654 (Iowa Ct. App. 1990) (“It goes without saying that whether preliminary

¹³*See, e.g.*, Iowa Code §§ 6B.2B, .54 (2017) (requiring agency to make a good faith effort to negotiate before condemning property by eminent domain); *id.* § 8B.24(5)(b) (providing conditions under which information technology may be procured by negotiation); *id.* § 28J.9(18)(c) (authorizing board of directors to provide criteria for port authority construction contracts in certain circumstances); *id.* § 68B.31(8) (authorizing negotiated settlements of legislative ethics committee complaints); *id.* § 73.19 (authorizing negotiated contracts in awarding a contract under the targeted small business procurement goal program); *id.* § 99D.9C(4)(c)(1) (stating that if parties cannot reach agreement on the terms of a lease associated with greyhound racing and begin arbitration, “[t]he parties may continue to negotiate all offers until an agreement is reached or a decision is rendered by the arbitrators”); *id.* § 103A.51(7) (defining a “manufactured or mobile home retailer” as a person who attempts to negotiate a sale of a manufactured home).

negotiations actually ripen into an oral contract depends upon the intention of the parties as gleaned from the facts of the case.”). Therefore, PERB cannot claim any special expertise to interpret the meaning of negotiations. See *Banilla Games*, 919 N.W.2d at 12–13; *Renda*, 784 N.W.2d at 14; cf. *Evercom Sys.*, 805 N.W.2d at 762–63 (finding the statutory phrase “unauthorized change in service” to be a substantive term within the special expertise of the Iowa Utilities Board).

Moreover, the union ratification requirements in section 20.17(4) do not involve complex or specialized subject matter. There is no special expertise held by PERB relevant to interpreting the provision. Indeed, the majority opinion in this case admits as much, stating that “SEIU’s challenge is facially compelling if the statute is read in isolation.” And a need to refer to other statutes in interpreting the provision—as the Regents and the majority opinion in this case argue with respect to Iowa’s open-meetings law—further suggests that the agency is not implicitly vested with interpretive authority. See *Renda*, 784 N.W.2d at 14. Granted, PERB necessarily must apply, and maybe even interpret, section 20.17(4) in carrying out its duties, but that basis standing alone does not warrant deference. See *Ramirez-Trujillo*, 878 N.W.2d at 769–70; *Iowa Ins. Inst.*, 867 N.W.2d at 65, 77.

Finally, even if Iowa’s open-meetings law were relevant to our analysis, PERB has no special expertise relevant to interpreting its provisions. And there is no express grant of interpretive authority to PERB over the provisions of the open-meetings law.

Therefore, PERB’s employer ratification requirement is based on a statutory interpretation made by an agency not clearly vested with authority to interpret the statutory provisions. See Iowa Code

§ 17A.19(10)(c). Consequently, our review should be for correction of errors at law. *See Tremel*, 785 N.W.2d at 692–93.

C. Application of Standard of Review to PERB’s Rule. PERB’s employer ratification requirement is erroneous. It is contrary to the legislature’s authorization of a designated representative to engage in negotiations in Iowa Code section 20.17(2), as detailed in division II *supra*. And the requirement is contrary to the specific authorization for the Regents to employ an attorney or counselor for “carrying out collective bargaining and related responsibilities.” Iowa Code § 262.9(16). In addition, the requirement conflicts with section 20.17(4), which only requires union ratification; we are bound by what the legislature actually said, not what it might have said. *Krull*, 522 N.W.2d at 612. PERB’s rule might have been valid if it said that a public employer *may* demand a ratification opportunity, but that is not what PERB did. Consequently, I conclude that PERB’s employer ratification requirement must be set aside. Iowa Code § 17A.19(10)(c).

Before turning to Iowa’s open-meetings law, there is perhaps one consideration worth mentioning. We have said that legislative acquiescence to a longstanding administrative rule may be a factor that saves the rule. *See, e.g., Lowe’s Home Ctrs., LLC v. Iowa Dep’t of Revenue*, 921 N.W.2d 38, 48 (Iowa 2018). Whatever the merits of that doctrine, a rule is invalid, “no matter how long it has existed or been exercised by administrative authority,” if it would “change the law by giving to the statute or Act an interpretation or construction of which its words are not susceptible.” *Nishnabotna Valley Rural Elec. Coop. v. Iowa Power & Light Co.*, 161 N.W.2d 348, 352 (Iowa 1968). A rule is invalid if it is “at variance with statutory provisions” or “nullif[ies] legislative intent.” *Schmitt v. Iowa Dep’t of Soc. Servs.*, 263 N.W.2d 739, 745 (Iowa 1978). The employer

ratification requirement conflicts with Iowa Code section 20.17 and in that way would give the statutory provisions therein a construction of which their words are not susceptible. As such, the longevity of PERB's rule is of no moment. The rule should have never come into existence, and in this case of first impression, we should erase it.

D. Relationship of Open-Meetings Law to the Question Before Us. The majority opinion in this case holds that PERB's rule is valid in light of the open-meetings law. The opinion suggests that any action taken contrary to the open-meetings law is void. That proposition is simply incorrect.

First, section 20.17(3) states that “[n]egotiating sessions . . . shall be exempt from the provisions of [the open-meetings law].” Iowa Code § 20.17(3). As discussed, during negotiating sessions, a public employer's representative may make a binding offer that requires no further action by the employer. Therefore, the open-meetings law does not apply.

Further, Iowa Code section 20.17(4) provides that “[t]he terms of a proposed collective bargaining agreement shall be made available to the public by the public employer.” That requirement already achieves the goal that would otherwise be accomplished by an open meeting: “safeguard[ing] free and open democracy by ensuring the government does not unnecessarily conduct its business in secret.” *Hutchison v. Shull*, 878 N.W.2d 221, 237 (Iowa 2016). Holding an open meeting to formally adopt the terms does nothing further. Can anyone seriously believe that a telephonic meeting which is called to order and adjourned within five minutes, as the record shows the Regents did to formally adopt a collective bargaining agreement in March 2017, meaningfully advances the goals of the open-meetings law, especially when the terms of the collective bargaining agreement are already made public?

Additionally, the majority opinion in this case would allow a general statute to override a more specific statute. When a general and specific statute conflict, we do not allow the general statute to override the specific one. Iowa Code § 4.7; *Rilea*, 919 N.W.2d at 388 n.6. Chapter 20 specifically refers to collective bargaining. Even more specifically, section 20.17(2) authorizes the public employer to designate a representative to reach agreement, and section 20.17(4) does not impose any conditions on a public employer before a collective bargaining agreement is finalized. By contrast, the open-meetings law is a general law concerning openness at public meetings. Therefore, the open-meetings law should not override the specific provisions in chapter 20.

There is some authority from other jurisdictions that a designated representative of a public employer may make an offer that binds the employer irrespective of an open-meetings requirement. In *South Benton Education Association v. Monroe Union High School District*, 732 P.2d 58, 59 (Or. Ct. App. 1987), an Oregon court considered whether a local school board could authorize its designated representative to enter into a binding contract notwithstanding a statute that required all meetings to be open to the public. The Oregon court observed that under the statute related to public employee collective bargaining, it was an unfair labor practice to refuse to reduce to writing and sign an agreement previously reached by collective bargaining. *Id.* at 62. The Oregon court also held that the more specific statute related to public employee collective bargaining prevailed over the more general statute related to meetings being open to the public. *Id.*

Once again, this is not to say that the public employer cannot hold an open meeting to adopt a collective bargaining agreement. Rather, it is only to say that the Iowa Code does not so require.

Even if the open-meetings law applied, its provisions do not support summary judgment in this case. The open-meetings law provides that an action which violates its substantive provisions is void only

if the suit for enforcement of this chapter is brought within six months of the violation and the court finds under the facts of the particular case that the public interest in the enforcement of the policy of this chapter outweighs the public interest in sustaining the validity of the action taken in the closed session.

Iowa Code § 21.6(3)(c). Here, no open-meetings action was filed within six months by an “aggrieved party,” and no court has engaged in the balancing of policy interests to declare the Regents’ action void. It would take some fortitude for a lawyer to argue on behalf of the Regents that they sought relief under the open-meetings law for their own violation. As a result, the open-meetings law provides no basis for relieving the Regents of potential liability in this case.

In sum, a public employer can authorize a representative to make a binding offer and PERB’s rule to the contrary is invalid. Therefore, the next question becomes whether, in this case, there is a triable issue of fact that a binding offer was made in this case.

IV. Whether There Is a Genuine Dispute that the Designated Representative Made a Binding Offer.

As Chief Justice Cady explains, the question in this case becomes whether the Regents intended to authorize their representative to make a binding offer. I agree with his resolution. PERB’s invalid rule, it seems, was a factor in how the Regents authorized the representative to negotiate on their behalf. It appears that, with the rule in mind, the Regents did not intend the representative to make a binding offer.

However, in the summary judgment proceeding, the district court did not grant summary judgment based on the Regents’ intent concerning

the scope of the representative's authority. Instead, the district court considered PERB's rule valid and grounded its summary judgment decision on that basis. The district court's argument reflects the Regents' summary judgment motion which also focused on the validity and obligations of the rule rather than how the rule affected the Regents' intentions regarding their representative's authority. The argument not presented to and considered by the district court involves "a different legal theory with a different factual predicate than the issues actually litigated in the summary judgment proceedings." *Winger Contracting Co. v. Cargill, Inc.*, 926 N.W.2d 526, 543 (Iowa 2019). We cannot affirm a grant of summary judgment on a basis that was not presented to and considered by the district court. See *Lamasters*, 821 N.W.2d at 863–64; *Meier*, 641 N.W.2d at 537. Therefore, I conclude that SEIU should survive summary judgment on this point.

V. Whether the Regents Are Entitled to Summary Judgment Based on Revocation of the January 10 Offer.

There is a legal question on whether a negotiator may revoke a binding offer after the union indicates its acceptance but before the union ratifies the proposed agreement. Under Iowa Code section 20.17(4), the union must ratify a proposed agreement by majority vote of voting members of the union.

On the one hand, the authority to negotiate suggests an ability to revoke an offer before it is duly accepted. "Negotiations occur only where there exists an opportunity for an offeror to modify or revise its proposal." *Drexel Heritage Furnishings*, 7 Cl. Ct. at 154. Further, under contract law, a party may revoke an offer at any time prior to the creation of a contract by acceptance. *Younglove v. Hoberg*, 195 Iowa 281, 285, 191 N.W. 985,

987 (1923); 1 Richard A. Lord, *Williston on Contracts* § 5:8, at 960–61 (4th ed. 2007) [hereinafter *Williston on Contracts*].

On the other hand, we do not strictly apply contract law in collective bargaining, *Sergeant Bluff-Luton Educ. Ass’n v. Sergeant Bluff-Luton Cmty. Sch. Dist.*, 282 N.W.2d 144, 150 (Iowa 1979); see *Pepsi-Cola Bottling Co. of Mason City v. NLRB*, 659 F.2d 87, 89 (8th Cir. 1981), and the duty to negotiate in good faith may preclude revocation after the union indicates its acceptance even if the members have not yet voted to ratify, see Iowa Code §§ 20.9(1), .10(1). For instance, a PERB administrative law judge concluded that a city failed to make good-faith efforts in reaching agreement when, after the parties’ representatives reached a tentative agreement but before the union could properly ratify the agreement, the city attempted to impose a new offer and renounce the tentative agreement. *Comm’n Workers of Am., Local 7113 v. City of Council Bluffs*, 88-HO-3723, at 12 (Aug. 24, 1988);¹⁴ cf. *Ottumwa Cmty. Sch. Dist. v. Ottumwa Educ. Ass’n*, 82-HO-2140, at 8 (Jan. 29, 1982) (suggesting that “the obvious need for some flexibility in the process” weighs against an “inability to withdraw from tentative agreements *for good cause*” (emphasis added)).¹⁵

This case, however, does not require us to resolve that legal question. This is because, even if the Regents *could have* revoked the January 10 offer after the union indicated its intention to accept, the State

¹⁴Available at [https://www.iowaperb.org/Document?db=IOWA-STATE-PERBS&query=\(select+0+\(byhits+\(match+PERB_CASE_NUMBER+%6088-HO-3723\)\)\)](https://www.iowaperb.org/Document?db=IOWA-STATE-PERBS&query=(select+0+(byhits+(match+PERB_CASE_NUMBER+%6088-HO-3723)))) [https://perma.cc/WFU3-GC43].

¹⁵Available at [https://www.iowaperb.org/Document?db=IOWA-STATE-PERBS&query=\(select+1+\(byhits+\(eq+ISSUANCE_DATE+%601982%2F01%2F29\)\)\)](https://www.iowaperb.org/Document?db=IOWA-STATE-PERBS&query=(select+1+(byhits+(eq+ISSUANCE_DATE+%601982%2F01%2F29)))) [https://perma.cc/3VNS-285B].

is not entitled to summary judgment because of the presence of factual issues.

The record shows the following facts. On January 25, SEIU's negotiator wrote Galloway that "SEIU has agreed to the terms of the [Regent's] final offer sent via email on January 10, 2017" and noted SEIU's plans to "hold a ratification vote as quickly as possible."

Galloway and the SEIU negotiator conversed by phone on January 31. According to the State's statement of undisputed facts, Galloway "informed SEIU there was no tentative agreement for the parties to ratify." In his affidavit, Galloway says that he told his counterparty on January 31 "that there was not an agreement to be ratified and that the parties need to continue to bargain." SEIU, by contrast, avers that Galloway "orally stated that the Regents believed the parties had not reached an agreement" but denies that Galloway stated there was "no tentative agreement for the parties to ratify." According to an affidavit from SEIU's negotiator, Galloway and Timothy Cook stated during the call that "in their opinion an agreement had not been reached" and "the Regents, through their representative, never withdrew their offer of January 10th."

The parties do not seem to dispute that Galloway failed to expressly revoke the Regents' January 10 offer during the January 31 call. SEIU's negotiator made this point in his affidavit, stating, "During the course of this phone call, the Regents, through their representative, never withdrew their offer of January 10th." The State's statement of undisputed facts, memorandum in support of summary judgment, and supporting affidavits do not dispute the point made in the SEIU affidavit. Indeed, the State's memorandum in support of summary judgment does not even argue that the offer was withdrawn.

The next day, February 1, the SEIU representative sent Galloway an email. That email stated,

In light of our conversation yesterday, I wanted to recap the situation in which SEIU, as the legal representatives of approximately 3,500 health care professionals, and the Board of Regents find themselves.

On January 10, 2017 you sent SEIU, as the chief negotiator for the Board of Regents, a final contract offer.

On January[] 25, 2017, SEIU accepted the offer with both a voice message and an email message.

On January 31, during a telephone conversation, you and Tim Cook informed me that the Board of Regents believed the parties had not, in fact, reached . . . an agreement.

As I said yesterday, SEIU plans to hold its ratification vote in the very near future. I will inform you of the results.

Please let me know if the Board of Regents' position changes.

Following that email, on February 7, SEIU members ratified their acceptance of the offer, and the SEIU negotiator wrote to Galloway to inform him of the ratification.

The record, it seems to me, is undisputed that the January 10 offer was never revoked by the Regents. The district court so concluded based on the undisputed statement in the SEIU affidavit concerning express revocation. The failure to identify a disputed fact and provide supporting evidence can lead to a finding that an issue is undisputed. *Diamond Prods. Co. v. Skipton Painting & Insulating, Inc.*, 392 N.W.2d 137, 139 (Iowa 1986). We should accept the district court's finding, not ignore, evade, or obscure it.

Even if SEIU cannot show that it is undisputed that the Regents did not revoke the January 10 offer, I think a reasonable fact finder could conclude that they did not revoke the offer. Professor Williston's treatise

explains the law on whether a communication is sufficient to act as a revocation:

The question what communication will operate as a revocation is a question of interpretation. In general, any statement which clearly indicates or implies unwillingness on the part of the offeror to contract according to the terms of the offer is sufficient, though the offeror does not use the word “revoke” or any similar operative language. . . . In the ideal world, a revocation when properly made should be as direct and explicit as an acceptance; if the offeror uses equivocal or inexplicit language, it may not be sufficient to operate as a revocation. Whether it has that effect will ordinarily be a question of fact, depending upon what a reasonable person in the position of the offeree would have thought.

1 *Williston on Contracts* § 5:8, at 965–67.

The only evidence put forward on revocation by the Regents is Galloway’s affidavit, which avers that on January 31 he stated “that there was not an agreement to be ratified and that the parties need to continue to bargain.” That statement, viewed in the light most favorable to SEIU, does not clearly indicate or imply unwillingness to contract according to the terms of the offer, especially given the Regents’ apparent nonresponse to SEIU’s letter the next day informing Galloway of SEIU’s intention to vote on the offer. *Id.*; see also *Pepsi-Cola*, 659 F.2d at 90 (“[W]e conclude that the July 12th proposal remained viable because the Company failed to expressly withdraw its offer prior to acceptance and because the circumstances do not indicate that the parties could have reasonably considered the offer withdrawn.”). And even if the statement is sufficient to shift the burden to SEIU, its representative specifically disputed the point by affidavit. According to SEIU, Galloway only “orally stated that the Regents believed the parties had not reached an agreement.” A reasonable fact finder, it seems to me, could credit testimony from SEIU and consequently believe that Galloway only indicated that there was no

agreement because the union members had not yet ratified the agreement. There is thus, at least, a genuine dispute of material fact. Consequently, I would find that SEIU survives summary judgment on this point.

VI. Conclusion.

For the reasons expressed above, I would vacate the grant of summary judgment and remand to the district court for further proceedings.

Wiggins, J., joins this dissent.

AGREEMENT

Between

TAMA COUNTY

And

LOCAL NO. 886, UNITED ELECTRICAL, RADIO &
MACHINE WORKERS OF AMERICA (UE)

July 1, 2024 to June 30, 2027

TABLE OF CONTENTS

Article 1	Recognition	Page 1
Article 2	Representation	Page 1
Article 3	Merger Clause	Page 1
Article 4	Management	Page 2
Article 5	Grievance Procedure	Page 2
Article 6	Seniority	Page 3
Article 7	Leave of Absence	Page 3
Article 8	Holidays	Page 6
Article 9	Vacations	Page 6
Article 10	Workday	Page 7
Article 11	Wages and Job Classification	Page 9
Article 12	Bulletin Boards	Page 9
Article 13	State or Federal Statutes	Page 9
Article 14	Discharge for Cause; Rules and Regulations	Page 9
Article 15	Longevity	Page 9
Article 16	Meetings	Page 10
Article 17	Savings Clause	Page 10
Article 18	Effective Dates	Page 11
	Signatures	Page 11
	Exhibit A-Pay Grades	Page 12

AGREEMENT

THIS AGREEMENT is made and entered by and between TAMA COUNTY (hereafter "Employer") and the TAMA COUNTY ROAD DEPARTMENT, LOCAL NO. 886, United Electrical, Radio & Machine Workers of America (UE) (hereafter "Union").

ARTICLE 1 RECOGNITION

Section 1. The Employer recognizes and acknowledges the Union as the exclusive bargaining representative for all employees in the bargaining unit for the purpose of collective bargaining as to matters included in Section 9 of the Public Employment Relations Act (hereafter "PERA").

Section 2. All present employees shall receive from the Employer a copy of the Agreement, and all new employees shall be advised that a collective bargaining agreement exists and shall be furnished a copy of same.

Section 3. This Agreement shall neither cover seasonal or probationary employees, nor be binding on Employer or Union with respect to same.

ARTICLE 2 REPRESENTATION

Section 1. The Employer and the Union shall keep each other currently informed in writing of their respective authorized representatives.

Section 2. The Employer agrees to permit the Union Steward, the Union Business Manager, and any other non-employee Union representative to have free access during working hours to visit working sites of the Employer for the purpose of adjusting grievances or conducting other legitimate Union business which could not otherwise be conducted during non-working hours. However, solicitation of new employees for membership in the Union shall not be considered "Union business" for the purposes of this Section.

Section 3. The Employer and Union agree that exceptions to all articles of this agreement may be granted in order for the Union and/or County to comply with the intent and provisions of the American with Disabilities Act.

ARTICLE 3 MERGER CLAUSE

This document and any attachments thereto comprise the entire agreement between the Employer and the Union and there exists no other agreements, express or implied, which are binding on either party. Any policy, practice or act acquiesced in, knowingly or unknowingly, by either party shall NOT be construed as binding on either if the same is not set forth in this Agreement. This Agreement expressly rejects and excludes a "past practices clause" or "continuation of practices clause" with regard to any term or condition of employment.

ARTICLE 4 MANAGEMENT

Section 1. Management retains all those rights enumerated in Section 7 of the P.E.R.A., and in addition, all reasonable, necessary, and appropriate rights which facilitate the Employer's execution of his responsibility to the public.

Section 2. Any bargaining unit member transferred to any position not covered by the Agreement shall not accrue seniority for the time of transfer. If he/she returns to the bargaining unit, he/she shall not be allowed to displace any employee. However, he/she will be allowed to maintain his/her seniority prior to transfer and if placed back in the bargaining unit, he/she will be paid the rate of his/her new job classification.

Section 3. The Employer reserves the right to require employees to punch a time clock and the right to promulgate rules and regulations regarding the same, and to discipline any employee who violates said rules and regulations.

ARTICLE 5 GRIEVANCE PROCEDURE

Section 1. In the event a dispute arises as to the meaning and application of the provisions of this Agreement, it shall be deemed a grievance and the parties shall make a reasonable effort to resolve the dispute between themselves immediately, with or without the Steward.

Section 2. If no satisfactory agreement is reached, then between the Steward and the County Engineer or his designee.

Section 3. If no satisfactory agreement is reached in Section 1 or 2 above, a meeting shall be held between the Board of Supervisors and the President, Secretary-Treasurer, and the designated Area of District Steward representing the aggrieved. The Business Manager may attend such meeting when deemed necessary. The aggrieved may attend such a meeting if he/she so desires. The decision of the Board of Supervisors will be final and binding.

Section 4. The Union shall inform the County of the names of the Stewards.

Section 5. Time spent during normal working hours by the Union representative pursuant to Article 5 in negotiating grievances with the Employer shall be paid at his/her normal hourly pay rate.

Section 6. Grievances arising out of discharge or other disciplinary action must be presented in writing to the other party within three (3) working days following the action complained of, and all other grievances within five (5) working days. An extension of time can be granted by mutual agreement.

ARTICLE 6 SENIORITY

Section 1. Seniority shall be based on the employee's length of continuous full-time service from date of hire with the Employer. Seniority shall continue for sick leave, Workers Compensation or approved leave of absence.

Section 2. New employees shall be on probation for sixty (60) days, after which time, they shall become regular employees and seniority shall relate back to the first date of hire for permanent employees.

Section 3. The Employer shall provide the Union with a list of current employees and the date each was hired, and the names and date of hire of all new employees.

Section 4. Seniority shall be lost as a result of quitting, discharge for proper cause, leave of absence taken by the employee without permission, and except in cases of bona fide emergency, unauthorized extension of leave of absence, absence of two (2) working days without notice to the Employer, or failure to report to work within forty-eight (48) hours after being recalled from layoff.

ARTICLE 7 LEAVES OF ABSENCE

Section 1. Sick Leave. All permanent, non-probationary employees shall earn eight (8) hours of sick leave per full calendar month of employment. Unused sick leave may be accumulated to a maximum of eight hundred (800) hours. Sick leave is income protection in case of illness and its use for purposes other than those set forth in this Agreement may subject the individual employee to disciplinary proceedings or constitute just cause for discharge.

Sick leave may be taken in the following situations:

- (a) For illness or injury to an employee which renders him/her unable to work;
- (b) For medical or dental care for the employee dispensed by licensed practitioners and regular, established health care facilities, provided the same cannot be deferred until after working hours;
- (c) For serious illness or serious injury to a member of the employee's immediate family, defined as his/her spouse and children (includes step-children) living at home. This sub-section includes the following:
 - 1. providing transportation for and accompanying the individual for emergency outpatient services;
 - 2. providing transportation for and handling admission procedures for the individual going to the hospital;

3. being in attendance during surgery, child delivery or other times when the patient is in an "intensive care" condition;
4. providing transportation for and handling discharge procedures for the individual returning from the hospital.

It does not include:

1. taking a spouse or dependent to scheduled appointments for medical or dental care;
2. hospital visitations for situations not listed above.

(d) For deaths in the employee's immediate family, defined as parents, spouse and children, for leave in addition to the funeral leave described in Section 7.

(e) If any County Secondary Road worker(s) dies, all employees shall be given the day off with pay who attend the funeral.

(f) For any other funerals, if a pallbearer or assigned duties by the funeral director.

Section 2. Covered Injuries. In the event an employee sustains an injury and the same is covered by Workers Compensation insurance and the employee also has accumulated sick leave benefits provided by the Employer, the employee, at his or her option, may do one of the following:

A. Use sick leave benefits and have an amount equal to all Workers Compensation checks when received deducted from the employee's payroll check. This deducted amount will be used to restore the employee's sick leave (which was reduced according to the sick leave provisions of this Article set forth above), by dividing the amount of the deducted payroll earnings by the employee's hourly rate.

B. Receive their Workers Compensation benefit check(s) and forego the use of sick leave benefits with the result being that the compensation benefits are not taxed and the employee's accrued sick leave total is unchanged.

Section 3. Sick leave may not be used while an employee is off work on another form of approved leave with pay. In the event that the illness extends beyond the other leave, sick leave may be taken to cover the additional absence. A medical doctor's written verification of illness or injury may be required by the Employer. Disposition of such cases will be determined by the Employer from a review of the physician's statement, an interview with the employee, and if necessary, a discussion with the physician.

When an employee terminates his/her employment, all unused sick leave will expire on the date of termination.

Section 4. Notification to Employer. With respect to sick leave as set forth above, the employee shall notify the Employer forthwith as soon as the employee has

knowledge that he/she will be taking sick leave. With respect to all other paid leaves of absence, the employee must request and have the same approved by the Employer prior to taking the leave of absence. If such advance notice and approval is not obtained from the Employer, the employee shall be considered absent from work and shall not receive approved leave of absence compensation. Application for extended leaves of absence shall be made in writing to the Administrator on forms supplied by the Employer, which shall be in triplicate, with copies for the Employer, President of the Union, and the employee. All leaves must have the approval of the Employer, whose approval will be indicated by the signing of each copy of the application form. This leave shall be granted at the sole discretion of the Engineer.

Section 5. Sick Leave Conversion. An employee who has accumulated eight hundred (800) hours of sick leave will continue accruing two (2) hours each month in a separate account as long as the employee has the maximum accumulation. These accumulated hours are not to be used for the purpose of sick leave. The value of the hours in the separate account will be paid to the employee annually on the first pay period following December 31. For example, an employee who earns \$14.00 per hour and maintains the 800 hour accumulation for 12 months would be paid \$336.00 the last pay period following December 31.

Section 6. Other Paid Leaves of Absence. An employee may be granted an approved leave of absence with pay for the following reasons:

- (a) When attending any legislative or judicial hearing as a witness under compulsion of subpoena, provided that a unit of government is party thereto, or when ordered by the Employer in connection with the employee's work. Such attendance shall include travel time to and from the tribunal; and
- (b) When reporting for or service on a grand or petit jury, whether state or federal; and

The employee's pay for leave of absence under Section 6(a) and 6(b) shall not be reduced by witness fees or juror fees the employee receives, nor by mileage received. However, the employee shall endorse over to the Employer any payments for witness fees or juror fees received under Sections 6(a) or 6(b).

Any time taken, voluntarily or under compulsion of subpoena, to appear in private litigation as a party or a witness in the employee's private capacity and not as an employee of Employer, must be taken without pay and must be approved in advance by Employer.

Section 7. In case of death in an employee's immediate family, the Employer will pay for a maximum of three (3) consecutive scheduled workdays, one of which shall be the day of the funeral, at the employee's hourly base rate for continuous time lost in arranging and/or attending funeral services.

An employee's immediate family is defined as his/her father, mother, step-father, step-mother, spouse, children, step children, brothers, sisters, spouse's parents, grandparents and grandchildren and step-grandchildren.

Section 8. The parties agree to comply with the Family Medical Leave Act and the policies developed by the County.

ARTICLE 8 HOLIDAYS

Section 1. All employees shall receive the following paid holidays for the period of time covered by this contract: Good Friday, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Day after Thanksgiving, Christmas Eve, Christmas Day, New Year's Day, Presidents Day, and Memorial Day.

Section 2. To be paid for the above holidays, the employee must either work on the last regular workday before and the first workday after the holiday, or must be on approved leave of absence for each of those days, or have the approval of the Engineer to be absent.

Section 3. Employees called out to work on one of the above designated holidays shall receive time and one-half (1 1/2) for all actual hours worked on the holiday, in addition to their regular holiday pay. Regular holiday pay shall be computed on the basis of an eight (8) hour day.

Section 4. Each employee's birthday is a paid holiday for the employee, and may be used as a floating holiday to be taken with the approval of the Employer. The employee's birthday must be taken within the fiscal year it is earned.

ARTICLE 9 VACATION

Section 1. Paid vacation shall be in accordance with the following schedule:

<u>Years of Continuous Service</u>	<u>Number of Workdays Paid</u>
1 year	5 days
2 years	10 days
8 years	15 days
15 years	20 days

Section 2. Personnel shall request their vacation at least thirty (30) days in advance within each classification for vacations of five (5) working days or more. At any time, no more than one-third (1/3) of the employees within each classification may be on vacation unless there are fewer than three (3) persons within the job classification. If there are fewer than three (3) people within the classification, only one (1) person may be on vacation at one time.

Section 3. All vacation must be requested in advance and approved by the Engineer's office before it can be taken. Vacation may be taken in minimum segments of one-quarter (1/4) hour.

Section 4. Upon proper termination of employment, any unused vacation and any vacation accrued for a fractional year from the employee's anniversary date will

be paid in cash; however, employees who have not completed one (1) full year of employment shall not receive vacation pay.

Section 5. All vacation must be used within one (1) year from the date it is entered on the books, this date being yearly anniversary of the employee's vacation base date. The only exception to this requirement is that an employee may accumulate a maximum of five (5) vacation days and carry these accumulated vacation days forward into the next yearly period.

Section 6. No vacation will be considered earned for the year until the employee has completed the year of continuous service from his/her anniversary date, except upon proper termination of employment as provided for in Article 9, Section 4.

Section 7. In the event an employee is hospitalized, or has a death in the immediate family as defined in Article 7, Section 7, while an employee is on approved vacation leave, that portion of the vacation leave may be substituted for and charged against the employee's accrued sick leave or funeral leave.

ARTICLE 10 WORKDAY

Section 1. The normal workday will be from 7:00 AM to 12:00 Noon and from 12:30 PM to 3:30 PM, Monday through Friday.

Section 2. One and one-half (1 1/2) times the regular rate of pay will be paid for all hours worked in excess of eight (8) hours per day. All work performed on Sunday will be at the rate of double time. All work performed on designated paid holidays will be at time and one-half (1 1/2) in addition to the regular holiday pay. All work performed on Saturday will be paid one and one-half (1 1/2) times the regular rate of pay.

Section 3. Overtime will be distributed within each classification equally, if possible.

Section 4. Two (2) work breaks of ten (10) minutes each may be taken each day, the first at 9:00 AM and the second at 2:30 PM, or at such times as the parties agree.

Section 5. Employer reserves the right to adjust the starting and quitting time of any or all employees to meet seasonal demands. If mutually agreeable to the Employer and employee(s), the normal workweek may be changed from five (5) days of eight (8) hours each to four (4) days of ten (10) hours each. Any employee(s) working four (4) ten (10) hour days under this arrangement shall change to five (5) eight (8) hour days during any week(s) containing paid holidays, unless all employees are on a four (4) ten (10) hour day schedule. In that case, no such changes would be made and a holiday would be considered to be ten (10) hours. Any hours beyond ten (10) will be compensated at one and one-half (1 1/2) times the employee's regular hourly rate of pay.

Section 6. Any permanent employee who is temporarily assigned to operate equipment carrying a higher rate will be paid the higher rate or his/her current rate,

whichever is higher; provided, however, to be paid the higher rate, the employee must work in the classification at least four (4) hours during the workday. This paragraph will not be applicable when an employee is being trained.

Section 7. (a). An employee shall be paid for at least two (2) hours of work if he/she is recalled to work after the normal workday. "Recalled to work" shall mean the employee has punched out at his/her time clock and has left the premises before being requested to return to work.

Section 7. (b). An employee shall be paid for at least two (2) hours if he/she reports to work on a regular workday and the Employer determines that there is no work for the employee that day.

Section 8. The Employer shall furnish transportation from shop to job, job to job, and job to shop during regular working hours.

Section 9. An employee punching out early shall be docked one-quarter (1/4) of an hour if he/she is up to twelve (12) minutes early. If the employee is from twelve (12) to twenty-seven (27) minutes early, he/she shall be docked one-half (1/2) hour.

Section 10. An employee working overtime shall be credited for one-quarter (1/4) hour if he/she works twelve (12) minutes. The employee shall be credited for one half (1/2) hour if he/she works twenty-seven (27) minutes; three-quarters (3/4) hour if he/she works forty-two (42) minutes; and one (1) hour if he/she works fifty-seven (57) minutes.

The following rules will apply to overtime payment of employees attending out-of-town meetings:

1. Employees attending optional meetings that involve an overnight will be paid for eight (8) hours at straight time for each day.
2. Employees attending mandatory meetings that involve an overnight will be paid from the time their meeting begins until the time their meeting ends.
3. Employees attending meetings and returning on the same day will be paid from the time their workday begins until the time their workday ends (less one-half (1/2) hour for lunch) unless the employee stays for a dinner after the meeting. If a dinner is involved, the employee will be paid from the time his/her workday begins until the time the actual meeting ends, plus the necessary travel time for his/her return trip.

Section 11. Employees who work overtime will, at their request, be paid for the additional hours or have them credited to their compensatory time account. Employees may not accrue more than thirty-two (32) hours of compensatory time. Effective 7-1-21, employees may not accrue more than forty (40) hours of compensatory time. The same restrictions apply as is stated in Article 9, Section 2 and all days off must be approved by the department head. Provided further, employee cannot have more than his maximum amount of vacation as outlined in Section 5, Article 9 in order to receive compensatory time.

ARTICLE 11
WAGES AND JOB CLASSIFICATIONS

Job classifications and wage rates shall be those which are set forth in the attached Exhibit A, by reference incorporated herein and made a part hereof, which includes the wage increases resulting from bargaining between the Union and the Employer.

Uniforms The Employer may provide weekly uniforms for Mechanics and Bridge Crew employees and pay all cost associates with the weekly uniform cleaning.

ARTICLE 12
BULLETIN BOARDS

Union notices may be posted on designated bulletin boards to be provided by the Employer.

ARTICLE 13
STATE OR FEDERAL STATUTES

Nothing in this Agreement shall require the Employer or the Union to take any action which shall be unlawful by reason of any applicable present or future state or federal statutes or executive order.

ARTICLE 14
DISCHARGE FOR CAUSE; RULES AND REGULATIONS

Section 1. The Employer shall not discipline or discharge an employee without just cause.

Section 2. The Employer may develop and put into effect reasonable work rules. The Union reserves the right to grieve the reasonableness of any work rules established, provided the grievance is filed within 10 days of the initial posting. These work rules shall not conflict with any of the provisions of this agreement. The employer shall post all work rules at least 3 days prior to their effective date.

Section 3. The Employer and the Union agree to comply with all federal and state laws concerning drug use and drug testing, including but not limited to: the Drug Free Workplace Act, Iowa Drug Testing Law and the Commercial Driver's License Regulations. The parties agree that they will comply with the policies developed by the County to comply with these Acts.

ARTICLE 15
LONGEVITY

Section 1. Longevity will be added to the hourly rate as follows:

<u>After Completion of</u>	<u>Rate</u>
5 years of continuous service	.25
10 years of continuous service	.30
15 years of continuous service	.35

20 years of continuous service	.40
25 years of continuous service	.45
30 years of continuous service	.50
35 years of continuous service	.55

ARTICLE 16 MEETINGS

For negotiations held during normal work hours, two (2) union negotiation committee members will be in pay status. A third member may attend with the union paying his/her wages. No more than two employees from the same maintenance district will be off for union business at any one time. No more than three (3) employees will be off for union business at any one time. No transportation will be provided for members on union business.

ARTICLE 17 SAVINGS CLAUSE

If any provision of this Agreement is subsequently declared by the proper legislative or judicial authority to be unlawful, unenforceable, or not in accordance with applicable statutes or ordinances, all other provisions of this Agreement shall remain in full force and effect for the duration of this Agreement.

ARTICLE 18
EFFECTIVE DATES

THIS AGREEMENT shall be effective beginning July 1, 2024, and shall continue in full force and effect until its expiration on June 30, 2027, except for a reopener in the 2nd and the 3rd year of the Agreement. The only item open for negotiations in Year 2 and Year 3 are changes to wage rates.

Dated this 15 day of April, 2024.

TAMA COUNTY, IOWA, EMPLOYER
DEPARTMENT

By [Signature]

By [Signature]

By [Signature]

TAMA COUNTY ROAD
LOCAL 886, UE UNION

By [Signature]

By [Signature]

By [Signature]

Acknowledged by:

[Signature]
Renee Von Boken

EXHIBIT A

Base hourly rates effective July 1, 2024

	<u>Start</u>	<u>6 mos.</u>	<u>1 year</u>	<u>2 years</u>
<u>Utility Worker 1</u>	26.29	26.78	27.28	28.32
Laborer (full-time) Truck Driver (single axle) Tandem Driver with Pup Trailer, Right-of-Way Maintenance Worker I Motor Patrol, Semi Driver, Construction Technician I,				
<u>Utility Worker 2</u>	26.87	27.36	27.87	28.89
Dragline, Excavator, Sign Technician, Construction Technician II, Lead Tractor Operator Maintenance Worker II				
<u>Utility Worker 3</u>	28.76	27.08	29.25	30.76
Inspector, Lead Bridge				
<u>Mechanic</u>	33.35	33.84	34.35	35.37

The selection of a substitute Foreman will be made by the County Engineer on a mutual agreement between the Engineer and the employee. Any employee who is temporarily appointed by the Engineer to perform the responsibilities of the Foreman will be paid at the maximum rate of Utility Worker 3 employee.

The Engineer reserves the right to place employees on the wage scale commensurate with his/her experience.

Any employee moving to a higher pay grade will be placed on a step that does not decrease their current pay. If the moving employee is at the top of their current pay grade at the time of the movement, then the employee will be placed on a step no lower than the one-year level on the new pay grade and will move to the top step of that pay grade after six months.

CHAPTER 20

PUBLIC EMPLOYMENT RELATIONS
(COLLECTIVE BARGAINING)

Referred to in §1C.2, 2.40, 8.5, 8.56, 8.58, 8A.402, 8A.411, 8A.413, 8D.3, 10A.601, 12.9, 13.13, 13.34, 15.106C, 19B.12, 21.9, 28J.7, 70A.20, 70A.23, 70A.37, 80.6, 80.6A, 80.15, 173.1, 235E.2, 256F.4, 260C.18D, 261E.9, 273.12, 279.13, 279.14, 279.19A, 284.3, 284.3A, 284.4, 284.8, 284.11, 284.13, 331.324, 400.8A, 411.39, 456A.13A, 602.1401, 602.11108

20.1	Public policy.	20.20	Mediation.
20.2	Title.	20.21	Fact-finding. Repealed by 2010 Acts, ch 1165, §31.
20.3	Definitions.	20.22	Binding arbitration.
20.4	Exclusions.	20.23	Legal actions.
20.5	Public employment relations board. Repealed by 2024 Acts, ch 1170, §368.	20.24	Notice and service — electronic filing system.
20.6	General powers and duties of board.	20.25	Internal conduct of employee organizations.
20.7	Public employer rights.	20.26	Employee organizations — political contributions — penalties.
20.8	Public employee rights.	20.27	Conflict with federal aid.
20.9	Scope of negotiations.	20.28	Inconsistent statutes — effect.
20.10	Prohibited practices.	20.29	Filing agreement — public access — internet site.
20.11	Prohibited practice violations.	20.30	Supervisory member — no reduction before retirement.
20.12	Strikes prohibited — penalties.	20.31	Mediator privilege.
20.13	Bargaining unit determination.	20.32	Transit employees — applicability.
20.14	Bargaining representative determination.	20.33	Retention of costs and fees.
20.15	Elections — agreements with the state.	20.34	Judicial review.
20.16	Duty to bargain.		
20.17	Procedures.		
20.18	Grievance procedures.		
20.19	Impasse procedures — agreement of parties.		

20.1 Public policy.

1. The general assembly declares that it is the public policy of the state to promote harmonious and cooperative relationships between government and its employees by permitting public employees to organize and bargain collectively; to protect the citizens of this state by assuring effective and orderly operations of government in providing for their health, safety, and welfare; to prohibit and prevent all strikes by public employees; and to protect the rights of public employees to join or refuse to join, and to participate in or refuse to participate in, employee organizations.

2. The general assembly declares that the purposes of the employment appeal board with respect to [this chapter](#) are to implement the provisions of [this chapter](#) and adjudicate and conciliate employment-related cases involving the state of Iowa and other public employers and employee organizations. For these purposes the powers and duties of the board include but are not limited to the following:

- a. Determining appropriate bargaining units and conducting representation elections.
- b. Adjudicating prohibited practice complaints including the exercise of exclusive original jurisdiction over all claims alleging the breach of the duty of fair representation imposed by [section 20.17](#).
- c. Fashioning appropriate remedial relief for violations of [this chapter](#), including but not limited to the reinstatement of employees with or without back pay and benefits.
- d. Adjudicating and serving as arbitrators regarding state merit system grievances and, upon joint request, grievances arising under collective bargaining agreements between public employers and certified employee organizations.
- e. Providing mediators and arbitrators to resolve impasses in negotiations.

f. Collecting and disseminating information concerning the wages, hours, and other conditions of employment of public employees.

[C75, 77, 79, 81, §20.1]

86 Acts, ch 1238, §39, 58; 86 Acts, ch 1245, §229; 87 Acts, ch 19, §3; 90 Acts, ch 1037, §1, 2; 2008 Acts, ch 1032, §201; 2010 Acts, ch 1165, §1, 2; 2023 Acts, ch 19, §2156; 2024 Acts, ch 1170, §171

State merit system, see [chapter 8A, subchapter IV](#)

20.2 Title.

[This chapter](#) shall be known as the “*Public Employment Relations Act*”.

[C75, 77, 79, 81, §20.2]

20.3 Definitions.

When used in [this chapter](#), unless the context otherwise requires:

1. “*Arbitration*” means the procedure whereby the parties involved in an impasse submit their differences to a third party for a final and binding decision or as provided in [this chapter](#).

2. “*Board*” means the employment appeal board established under [section 10A.601](#).

3. a. “*Confidential employee*” means any public employee who works in the personnel offices of a public employer or who has access to information subject to use by the public employer in negotiating or who works in a close continuing working relationship with public officers or representatives associated with negotiating on behalf of the public employer.

b. “*Confidential employee*” also includes the personal secretary of any of the following:

(1) Any elected official or person appointed to fill a vacancy in an elective office.

(2) A member of any board or commission.

(3) The administrative officer, director, or chief executive officer of a public employer or major division thereof.

(4) The deputy or first assistant of any of the persons described in subparagraphs (1) through (3).

4. “*Employee organization*” means an organization of any kind in which public employees participate and which exists for the primary purpose of representing employees in their employment relations.

5. “*Governing body*” means the board, council, or commission, whether elected or appointed, of a political subdivision of this state, including school districts and other special purpose districts, which determines the policies for the operation of the political subdivision.

6. “*Impasse*” means the failure of a public employer and the employee organization to reach agreement in the course of negotiations.

7. “*Mediation*” means assistance by an impartial third party to reconcile an impasse between the public employer and the employee organization through interpretation, suggestion, and advice.

8. “*Professional employee*” means any one of the following:

a. Any employee engaged in work to which all of the following apply:

(1) The work is predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work.

(2) The work involves the consistent exercise of discretion and judgment in its performance.

(3) The work is of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time.

(4) The work requires knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes.

b. Any employee to whom all of the following apply:

(1) The employee has completed the courses of specialized intellectual instruction and study described in paragraph “a”, subparagraph (4).

(2) The employee is performing related work under the supervision of a professional

person to qualify the employee to become a professional employee as defined in paragraph “a”.

9. “Public employee” means any individual employed by a public employer, except individuals exempted under the provisions of [section 20.4](#).

10. “Public employer” means the state of Iowa, its boards, commissions, agencies, departments, and its political subdivisions including school districts and other special purpose districts.

11. “Public safety employee” means a public employee who is employed as one of the following:

- a. A sheriff’s regular deputy.
- b. A marshal or police officer of a city, township, or special-purpose district or authority who is a member of a paid police department.
- c. A member, except a non-peace officer member, of the division of state patrol, narcotics enforcement, state fire marshal, or criminal investigation, including but not limited to a gaming enforcement officer, who has been duly appointed by the department of public safety in accordance with [section 80.15](#).
- d. A conservation officer or park ranger as authorized by [section 456A.13](#).
- e. A permanent or full-time fire fighter of a city, township, or special-purpose district or authority who is a member of a paid fire department.
- f. A peace officer designated by the department of transportation under [section 321.477](#) who is subject to mandated law enforcement training.

12. “Strike” means a public employee’s refusal, in concerted action with others, to report to duty, or a willful absence from the employee’s position, or a stoppage of work by the employee, or the employee’s abstinence in whole or in part from the full, faithful, and proper performance of the duties of employment, for the purpose of inducing, influencing, or coercing a change in the conditions, compensation, rights, privileges, or obligations of public employment.

13. “Supplemental pay” means a payment of moneys or other thing of value that is in addition to compensation received pursuant to any other permitted subject of negotiation specified in [section 20.9](#) and is related to the employment relationship.

[C75, 77, 79, 81, §20.3]

[2010 Acts, ch 1165, §3, 4; 2017 Acts, ch 2, §1, 26, 27; 2018 Acts, ch 1026, §10; 2024 Acts, ch 1170, §172](#)

Referred to in [§8.5, 20.32, 22.7\(69\), 70A.19, 70A.41, 80.45A, 185.34, 235A.15, 400.18, 400.28, 602.11108](#)

20.4 Exclusions.

The following public employees shall be excluded from the provisions of [this chapter](#):

1. Elected officials and persons appointed to fill vacancies in elective offices, and members of any board or commission.
2. Representatives of a public employer, including the administrative officer, director or chief executive officer of a public employer or major division thereof as well as the officer’s or director’s deputy, first assistant, and any supervisory employees. “Supervisory employee” means any individual having authority in the interest of the public employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other public employees, or the responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. All school superintendents, assistant superintendents, principals and assistant principals shall be deemed to be supervisory employees.
3. Confidential employees.
4. Students working as part-time public employees twenty hours per week or less, except graduate or other postgraduate students in preparation for a profession who are engaged in academically related employment as a teaching, research, or service assistant.
5. Temporary public employees employed for a period of four months or less.
6. Commissioned and enlisted personnel of the Iowa national guard.

7. Judicial officers, and confidential, professional, or supervisory employees of the judicial branch.

8. Patients and inmates employed, sentenced or committed to any state or local institution.

9. Persons employed by the state department of justice.

10. Persons employed by the credit union division of the department of insurance and financial services.

11. Persons employed by the banking division of the department of insurance and financial services.

12. The appointee serving as the coordinator of the office of renewable fuels and coproducts, as provided in [section 159A.3](#).

[C75, 77, 79, 81, §20.4]

[83 Acts, ch 186, §10012, 10201](#); [86 Acts, ch 1245, §230](#); [86 Acts, ch 1246, §612](#); [89 Acts, ch 158, §3](#); [89 Acts, ch 296, §5](#); [91 Acts, ch 254, §3](#); [94 Acts, ch 1119, §9](#); [98 Acts, ch 1047, §12](#); [2007 Acts, ch 88, §1](#); [2010 Acts, ch 1061, §5](#); [2023 Acts, ch 19, §2053, 2073, 2714](#)

Referred to in [§12.9, 20.3, 279.23](#)

20.5 Public employment relations board. Repealed by 2024 Acts, ch 1170, §368.

20.6 General powers and duties of board.

The board shall:

1. Administer the provisions of [this chapter](#) and delegate the powers and duties of the board to persons employed by the board, as appropriate.

2. Collect, for public employers other than the state and its boards, commissions, departments, and agencies, data and conduct studies relating to wages, hours, benefits, and other terms and conditions of public employment and make the same available to any interested person or organization.

3. Establish minimum qualifications for arbitrators and mediators, establish procedures for appointing, maintaining, and removing from a list persons representative of the public to be available to serve as arbitrators and mediators, and establish compensation rates for arbitrators and mediators.

4. Hold hearings and administer oaths, examine witnesses and documents, take testimony and receive evidence, issue subpoenas to compel the attendance of witnesses and the production of records, and delegate such power to a member of the board, persons appointed or employed by the board, including administrative law judges, or administrative law judges employed by the division of administrative hearings created by [section 10A.801](#), for the performance of its functions. The board may petition the district court at the seat of government or of the county where a hearing is held to enforce a board order compelling the attendance of witnesses and production of records.

5. Adopt rules in accordance with the provisions of [chapter 17A](#) as it may deem necessary to carry out the purposes of [this chapter](#).

6. Appoint a certified shorthand reporter to report state employee grievance and discipline resolution proceedings pursuant to [section 8A.415](#) and fix a reasonable amount of compensation for such service and for any transcript requested by the board, which amounts shall be taxed as other costs.

7. Contract with a vendor as the board may deem necessary to conduct elections required by [section 20.15](#) on behalf of the board. The board shall establish fees by rule pursuant to [chapter 17A](#) to cover the cost of elections required by [section 20.15](#). Such fees shall be paid in advance of an election and shall be paid by each employee organization listed on the ballot.

[C75, 77, 79, 81, §20.6]

[88 Acts, ch 1109, §5](#); [91 Acts, ch 174, §1](#); [98 Acts, ch 1202, §28, 46](#); [2010 Acts, ch 1165, §6](#); [2017 Acts, ch 2, §2, 3, 26, 27](#); [2023 Acts, ch 19, §2158](#); [2024 Acts, ch 1170, §173](#)

Referred to in [§20.33](#)

Personnel appeals, see [§8A.415](#)

Appeals of adverse employment actions against whistleblowers, see [§70A.28](#)

20.7 Public employer rights.

Public employers shall have, in addition to all powers, duties, and rights established by constitutional provision, statute, ordinance, charter, or special act, the exclusive power, duty, and the right to:

1. Direct the work of its public employees.
2. Hire, evaluate, promote, demote, transfer, assign, and retain public employees in positions within the public agency.
3. Suspend or discharge public employees for proper cause.
4. Maintain the efficiency of governmental operations.
5. Relieve public employees from duties because of lack of work or for other legitimate reasons.
6. Determine and implement methods, means, assignments, and personnel by which the public employer's operations are to be conducted.
7. Take such actions as may be necessary to carry out the mission of the public employer.
8. Initiate, prepare, certify, and administer its budget.
9. Exercise all powers and duties granted to the public employer by law.

[C75, 77, 79, 81, §20.7]

[2017 Acts, ch 2, §4, 26, 27](#)

20.8 Public employee rights.

Public employees shall have the right to:

1. Organize, or form, join, or assist any employee organization.
2. Negotiate collectively through representatives of their own choosing.
3. Engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection insofar as any such activity is not prohibited by [this chapter](#) or any other law of the state.
4. Refuse to join or participate in the activities of employee organizations, including the payment of any dues, fees or assessments or service fees of any type.
5. Exercise any right or seek any remedy provided by law, including but not limited to those rights and remedies available under sections [70A.28](#) and [70A.29](#), [chapter 8A](#), [subchapter IV](#), and chapters [216](#) and [400](#).

[C75, 77, 79, 81, §20.8]

[2017 Acts, ch 2, §5, 26, 27](#)

Referred to in [§20.10](#)

20.9 Scope of negotiations.

1. For negotiations regarding a bargaining unit with at least thirty percent of members who are public safety employees, the public employer and the employee organization shall meet at reasonable times, including meetings reasonably in advance of the public employer's budget-making process, to negotiate in good faith with respect to wages, hours, vacations, insurance, holidays, leaves of absence, shift differentials, overtime compensation, supplemental pay, seniority, transfer procedures, job classifications, health and safety matters, evaluation procedures, procedures for staff reduction, in-service training, grievance procedures for resolving any questions arising under the agreement, and other matters mutually agreed upon. For negotiations regarding a bargaining unit that does not have at least thirty percent of members who are public safety employees, the public employer and the employee organization shall meet at reasonable times, including meetings reasonably in advance of the public employer's budget-making process, to negotiate in good faith with respect to base wages and other matters mutually agreed upon. Such obligation to negotiate in good faith does not compel either party to agree to a proposal or make a concession. Mandatory subjects of negotiation specified in [this subsection](#) shall be interpreted narrowly and restrictively.

2. Nothing in [this section](#) shall diminish the authority and power of the department of administrative services, board of regents' merit system, Iowa public broadcasting board's merit system, or any civil service commission established by constitutional provision, statute, charter, or special act to recruit employees, prepare, conduct, and grade examinations, rate

candidates in order of their relative scores for certification for appointment or promotion or for other matters of classification, reclassification, or appeal rights in the classified service of the public employer served.

3. All retirement systems, dues checkoffs, and other payroll deductions for political action committees or other political contributions or political activities shall be excluded from the scope of negotiations. For negotiations regarding a bargaining unit that does not have at least thirty percent of members who are public safety employees, insurance, leaves of absence for political activities, supplemental pay, transfer procedures, evaluation procedures, procedures for staff reduction, and subcontracting public services shall also be excluded from the scope of negotiations.

4. The term of a contract entered into pursuant to [this chapter](#) shall not exceed five years.

[C75, 77, 79, 81, §20.9]

2003 Acts, ch 145, §286; 2017 Acts, ch 2, §6, 26, 27

Referred to in §20.3, 20.10, 20.15, 20.17, 20.22, 21.9, 70A.30, 284.3A

Certain dues checkoffs prohibited, see §70A.19

20.10 Prohibited practices.

1. It shall be a prohibited practice for any public employer, public employee, or employee organization to refuse to negotiate in good faith with respect to the scope of negotiations as defined in [section 20.9](#).

2. It shall be a prohibited practice for a public employer or the employer's designated representative to:

a. Interfere with, restrain, or coerce public employees in the exercise of rights granted by [this chapter](#).

b. Dominate or interfere in the administration of any employee organization.

c. Encourage or discourage membership in any employee organization, committee, or association by discrimination in hiring, tenure, or other terms or conditions of employment.

d. Discharge or discriminate against a public employee because the employee has filed an affidavit, petition, or complaint or given any information or testimony under [this chapter](#), or because the employee has formed, joined, or chosen to be represented by any employee organization.

e. Refuse to negotiate collectively with representatives of certified employee organizations as required in [this chapter](#).

f. Deny the rights accompanying certification granted in [this chapter](#).

g. Refuse to participate in good faith in any agreed upon impasse procedures or those set forth in [this chapter](#).

h. Engage in a lockout.

3. It shall be a prohibited practice for public employees or an employee organization or for any person, union, or organization or their agents to:

a. Interfere with, restrain, coerce, or harass any public employee with respect to any of the employee's rights under [this chapter](#) or in order to prevent or discourage the employee's exercise of any such right, including, without limitation, all rights under [section 20.8](#).

b. Interfere, restrain, or coerce a public employer with respect to rights granted in [this chapter](#) or with respect to selecting a representative for the purposes of negotiating collectively or the adjustment of grievances.

c. Refuse to bargain collectively with a public employer as required in [this chapter](#).

d. Refuse to participate in good faith in any agreed upon impasse procedures or those set forth in [this chapter](#).

e. Violate [section 20.12](#).

f. Violate the provisions of [sections 732.1 through 732.3](#), which are hereby made applicable to public employers, public employees, and employee organizations.

g. Picket in a manner which interferes with ingress and egress to the facilities of the public employer.

h. Engage in, initiate, sponsor, or support any picketing that is performed in support of a strike, work stoppage, boycott, or slowdown against a public employer.

i. Picket for any unlawful purpose.

j. Negotiate or attempt to negotiate directly with a member of the governing board of a public employer if the public employer has appointed or authorized a bargaining representative for the purpose of bargaining with the public employees or their representative, unless the member of the governing board is the designated bargaining representative of the public employer.

4. The expressing of any views, argument, or opinion, or the dissemination thereof, whether orally or in written, printed, graphic, or visual form, shall not constitute or be evidence of any prohibited practice under any of the provisions of [this chapter](#), if such expression contains no threat of reprisal or force or promise of benefit.

[C75, 77, 79, 81, §20.10]

[2010 Acts, ch 1165, §7 – 13; 2017 Acts, ch 2, §7, 26, 27; 2021 Acts, ch 80, §10](#)

Referred to in [§20.11](#)

20.11 Prohibited practice violations.

1. Proceedings against a party alleging a violation of [section 20.10](#) shall be commenced by filing a complaint with the board within ninety days of the alleged violation, causing a copy of the complaint to be served upon the accused party. The accused party shall have ten days within which to file a written answer to the complaint. However, the board may conduct a preliminary investigation of the alleged violation, and if the board determines that the complaint has no basis in fact, the board may dismiss the complaint. The board shall promptly thereafter set a time and place for hearing in the county where the alleged violation occurred, provided, however, that the presiding officer may conduct the hearing through the use of technology from a remote location. The parties shall be permitted to be represented by counsel, summon witnesses, and request the board to subpoena witnesses on the requester's behalf. Compliance with the technical rules of pleading and evidence shall not be required.

2. The board may designate one of its members, an administrative law judge, or any other qualified person employed by the board to serve as the presiding officer at the hearing. The presiding officer has the powers as may be exercised by the board for conducting the hearing and shall follow the procedures adopted by the board for conducting the hearing. The proposed decision of the presiding officer may be appealed to the board, or reviewed on motion of the board, in accordance with the provisions of [chapter 17A](#).

3. The board shall appoint a certified shorthand reporter to report the proceedings and the board shall fix the reasonable amount of compensation for such service, and for any transcript requested by the board, which amounts shall be taxed as other costs.

4. The board shall file its findings of fact and conclusions of law within sixty days of the close of any hearing, receipt of the transcript, or submission of any briefs. If the board finds that the party accused has committed a prohibited practice, the board may, within thirty days of its decision, enter into a consent order with the party to discontinue the practice, or after the thirty days following the decision may petition the district court for injunctive relief pursuant to [rules of civil procedure 1.1501 to 1.1511](#).

5. The board's review of proposed decisions and the rehearing of final decisions is governed by the provisions of [chapter 17A](#).

[C75, 77, 79, 81, §20.11]

[88 Acts, ch 1109, §6; 89 Acts, ch 296, §6, 7; 91 Acts, ch 174, §2; 2010 Acts, ch 1165, §14; 2023 Acts, ch 19, §2159](#)

Referred to in [§20.33](#)

20.12 Strikes prohibited — penalties.

1. It shall be unlawful for any public employee or any employee organization, directly or indirectly, to induce, instigate, encourage, authorize, ratify, or participate in a strike against any public employer.

2. It shall be unlawful for any public employer to authorize, consent to, or condone a strike; or to pay or agree to pay any public employee for any day in which the employee participates in a strike; or to pay or agree to pay any increase in compensation or benefits to any public employee in response to or as a result of any strike or any act which violates [subsection 1](#). It shall be unlawful for any official, director, or representative of any public

employer to authorize, ratify, or participate in any violation of [this subsection](#). Nothing in [this subsection](#) shall prevent new or renewed bargaining and agreement within the scope of negotiations as defined by [this chapter](#), at any time after such violation of [subsection 1](#) has ceased; but it shall be unlawful for any public employer or employee organization to bargain at any time regarding suspension or modification of any penalty provided in [this section](#) or regarding any request by the public employer to a court for such suspension or modification.

3. In the event of any violation or imminently threatened violation of [subsection 1 or 2](#), any citizen domiciled within the jurisdictional boundaries of the public employer may petition the district court for the county in which the violation occurs or the district court for Polk county for an injunction restraining such violation or imminently threatened violation. [Rules of civil procedure 1.1501 to 1.1511](#) regarding injunctions shall apply. However, the court shall grant a temporary injunction if it appears to the court that a violation has occurred or is imminently threatened; the plaintiff need not show that the violation or threatened violation would greatly or irreparably injure the plaintiff; and no bond shall be required of the plaintiff unless the court determines that a bond is necessary in the public interest. Failure to comply with any temporary or permanent injunction granted pursuant to [this section](#) shall constitute a contempt punishable pursuant to [chapter 665](#). The punishment shall not exceed five hundred dollars for an individual, or ten thousand dollars for an employee organization or public employer, for each day during which the failure to comply continues, or imprisonment in a county jail not exceeding six months, or both such fine and imprisonment. An individual or an employee organization which makes an active good faith effort to comply fully with the injunction shall not be deemed to be in contempt.

4. If a public employee is held to be in contempt of court for failure to comply with an injunction pursuant to [this section](#), or is convicted of violating [this section](#), the employee shall be ineligible for any employment by the same public employer for a period of twelve months. The employee's public employer shall immediately discharge the employee, but upon the employee's request the court shall stay the discharge to permit further judicial proceedings.

5. If an employee organization or any of its officers is held to be in contempt of court for failure to comply with an injunction pursuant to [this section](#), or is convicted of violating [this section](#), the employee organization shall be immediately decertified, shall cease to represent the bargaining unit, and may again be certified only after twenty-four months have elapsed from the effective date of decertification and only if a new petition for certification pursuant to [section 20.14](#) is filed and a new certification election pursuant to [section 20.15](#) is held. The penalties provided in [this section](#) may be suspended or modified by the court, but only upon request of the public employer and only if the court determines the suspension or modification is in the public interest.

6. Each of the remedies and penalties provided by [this section](#) is separate and several, and is in addition to any other legal or equitable remedy or penalty.

[C75, 77, 79, 81, §20.12]

[2017 Acts, ch 2, §8, 26, 27](#)

Referred to in [§20.10](#)

20.13 Bargaining unit determination.

1. Board determination of an appropriate bargaining unit shall be upon petition filed by a public employer, public employee, or employee organization.

2. Within thirty days of receipt of a petition, the board shall conduct a public hearing, receive written or oral testimony, and promptly thereafter file an order defining the appropriate bargaining unit. In defining the unit, the board shall take 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.

3. Professional and nonprofessional employees shall not be included in the same bargaining unit unless a majority of both agree.

[C75, 77, 79, 81, §20.13]

[2010 Acts, ch 1165, §15](#); [2023 Acts, ch 19, §2160](#)

Referred to in [§20.14](#)

20.14 Bargaining representative determination.

1. Board certification of an employee organization as the exclusive bargaining representative of a bargaining unit shall be upon a petition filed with the board by a public employer, public employee, or an employee organization and an election conducted pursuant to [section 20.15](#).

2. The petition of an employee organization shall allege that:

a. The employee organization has submitted a request to a public employer to bargain collectively on behalf of a designated group of public employees.

b. The petition is accompanied by written evidence that thirty percent of such public employees are members of the employee organization or have authorized it to represent them for the purposes of collective bargaining.

3. The petition of a public employee shall allege that an employee organization which has been certified as the bargaining representative does not represent a majority of such public employees and that the petitioners do not want to be represented by an employee organization or seek certification of an employee organization.

4. The petition of a public employer shall allege that it has received a request to bargain from an employee organization which has not been certified as the bargaining representative of the public employees in an appropriate bargaining unit.

5. The board shall investigate the allegations of any petition and shall give reasonable notice of the receipt of such a petition to all public employees, employee organizations and public employers named or described in such petitions or interested in the representation questioned. The board shall thereafter call an election under [section 20.15](#), unless:

a. It finds that less than thirty percent of the public employees in the unit appropriate for collective bargaining support the petition for decertification or for certification.

b. The appropriate bargaining unit has not been determined pursuant to [section 20.13](#).

[C75, 77, 79, 81, §20.14]

[2010 Acts, ch 1165, §16, 17](#)

Referred to in [§20.12](#), [20.15](#), [22.7\(69\)](#)

20.15 Elections — agreements with the state.

1. *Initial certification elections.*

a. Upon the filing of a petition for certification of an employee organization, the board shall submit a question to the public employees at an election in the bargaining unit found appropriate by the board. The question on the ballot shall permit the public employees to vote for no bargaining representation or for any employee organization which has petitioned for certification or which has presented proof satisfactory to the board of support of thirty percent or more of the public employees in the appropriate unit.

b. (1) If a majority of the public employees in the bargaining unit vote for no bargaining representation, the public employees in the bargaining unit found appropriate by the board shall not be represented by an employee organization.

(2) If a majority of the public employees in the bargaining unit vote for a listed employee organization, then that employee organization shall represent the public employees in the bargaining unit found appropriate by the board.

(3) If none of the choices on the ballot receive the vote of a majority of the public employees in the bargaining unit, the public employees in the bargaining unit found appropriate by the board shall not be represented by an employee organization.

c. The board shall not consider a petition for certification of an employee organization as the exclusive representative of a bargaining unit unless a period of two years has elapsed from the date of the last certification election in which an employee organization was not certified as the exclusive representative of that bargaining unit, of the last retention and

recertification election in which an employee organization was not retained and recertified as the exclusive representative of that bargaining unit, or of the last decertification election in which an employee organization was decertified as the exclusive representative of that bargaining unit. The board shall also not consider a petition for certification as the exclusive bargaining representative of a bargaining unit if the bargaining unit is at that time represented by a certified exclusive bargaining representative.

2. *Retention and recertification elections.*

a. The 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. The question on the ballot shall be whether the bargaining representative of the public employees in the bargaining unit shall be retained and recertified as the bargaining representative of the public employees in the bargaining unit. For collective bargaining agreements with a June 30 expiration date, the election shall occur between June 1 and November 1, both dates included, in the year prior to that expiration date. For collective bargaining agreements with a different expiration date, the election shall occur between three hundred sixty-five and two hundred seventy days prior to the expiration date.

b. (1) If a majority of the public employees in the bargaining unit vote to retain and recertify the representative, the board shall retain and recertify the bargaining representative and the bargaining representative shall continue to represent the public employees in the bargaining unit.

(2) If a majority of the public employees in the bargaining unit do not vote to retain and recertify the representative, the board, after the period for filing written objections pursuant to [subsection 4](#) has elapsed, shall immediately decertify the representative and the public employees shall not be represented by an employee organization except pursuant to the filing of a subsequent petition for certification of an employee organization as provided in [section 20.14](#) and an election conducted pursuant to such petition. Such written objections and decertifications shall be subject to applicable administrative and judicial review.

3. *Decertification elections.*

a. Upon the filing of a petition for decertification of an employee organization, the board shall submit a question to the public employees at an election in the bargaining unit found appropriate by the board. The question on the ballot shall be whether the bargaining representative of the public employees in the bargaining unit shall be decertified as the bargaining representative of public employees in the bargaining unit.

b. (1) If a majority of the public employees in the bargaining unit vote to decertify the bargaining representative, the board, after the period for filing written objections pursuant to [subsection 4](#) has elapsed, shall immediately decertify the representative and the public employees shall not be represented by an employee organization except pursuant to the filing of a subsequent petition for certification of an employee organization as provided in [section 20.14](#) and an election conducted pursuant to such petition. Such written objections and decertifications shall be subject to applicable administrative and judicial review.

(2) If a majority of the public employees in the bargaining unit do not vote to decertify the bargaining representative, the bargaining representative shall continue to represent the public employees in the bargaining unit.

c. The board shall not consider a petition for decertification of an employee organization unless a bargaining unit's collective bargaining agreement exceeds two years in length. The board shall not schedule a decertification election for a bargaining unit within one year of a prior certification, retention and recertification, or decertification election involving the bargaining unit. Unless otherwise prohibited by this paragraph, the board shall schedule a decertification election not less than one hundred fifty days before the expiration date of the bargaining unit's collective bargaining agreement.

4. *Invalidation of elections.* Upon written objections filed by any public employee, public employer, or employee organization involved in the election within ten days after notice of the results of the election, if the board finds that misconduct or other circumstances prevented the public employees eligible to vote from freely expressing their preferences, the board may invalidate the election and hold a second election for the public employees.

5. *Results certified.* Upon completion of a valid election in which the majority choice of

the public employees in the bargaining unit is determined, the board shall certify the results of the election and shall give reasonable notice of the order to all employee organizations listed on the ballot, the public employers, and the public employees in the appropriate bargaining unit.

6. *State agreements.* A collective bargaining agreement with the state, its boards, commissions, departments, and agencies shall be for two years. The provisions of a collective bargaining agreement or arbitrator's award affecting state employees shall not provide for renegotiations which would require the refinancing of subjects within the scope of negotiations under [section 20.9](#) for the second year of the term of the agreement, except as provided in [section 20.17, subsection 6](#). The effective date of any such agreement shall be July 1 of odd-numbered years, provided that if an exclusive bargaining representative is certified on a date which will prevent the negotiation of a collective bargaining agreement prior to July 1 of odd-numbered years for a period of two years, the certified collective bargaining representative may negotiate a one-year contract with the public employer which shall be effective from July 1 of the even-numbered year to July 1 of the succeeding odd-numbered year when new agreements shall become effective.

[C75, 77, 79, 81, §20.15]

[2010 Acts, ch 1165, §18; 2017 Acts, ch 2, §9, 26, 27](#)

Referred to in [§20.6, 20.12, 20.14, 20.33, 22.7\(69\), 22.7\(70\), 602.1401](#)

20.16 Duty to bargain.

Upon the receipt by a public employer of a request from an employee organization to bargain on behalf of public employees, the duty to engage in collective bargaining shall arise if the employee organization has been certified by the board as the exclusive bargaining representative for the public employees in that bargaining unit.

[C75, 77, 79, 81, §20.16]

20.17 Procedures.

1. The employee organization certified as the bargaining representative shall be the exclusive representative of all public employees in the bargaining unit and shall represent all public employees fairly. However, any public employee may meet and adjust individual complaints with a public employer. To sustain a claim that a certified employee organization has committed a prohibited practice by breaching its duty of fair representation, a public employee must establish by a preponderance of the evidence action or inaction by the organization which was arbitrary, discriminatory, or in bad faith.

2. The employee organization and the public employer may designate any individual as its representative to engage in collective bargaining negotiations.

3. Negotiating sessions, strategy meetings of public employers, mediation, and the deliberative process of arbitrators shall be exempt from the provisions of [chapter 21](#). However, the employee organization shall present its initial bargaining position to the public employer at the first bargaining session. The public employer shall present its initial bargaining position to the employee organization at the second bargaining session, which shall be held no later than two weeks following the first bargaining session. Both sessions shall be open to the public and subject to the provisions of [chapter 21](#). Parties who by agreement are utilizing a cooperative alternative bargaining process may exchange their respective initial interest statements in lieu of initial bargaining positions at these open sessions. Hearings conducted by arbitrators shall be open to the public.

4. The terms of a proposed collective bargaining agreement shall be made available to the public by the public employer and reasonable notice shall be given to the public employees by the employee organization prior to a ratification election. The collective bargaining agreement shall become effective only if ratified by a majority of those voting by secret ballot.

5. Terms of any collective bargaining agreement may be enforced by a civil action in the district court of the county in which the agreement was made upon the initiative of either party.

6. A collective bargaining agreement or arbitrator's award shall not be valid or enforceable if its implementation would be inconsistent with any statutory limitation on

the public employer's funds, spending, or budget or would substantially impair or limit the performance of any statutory duty by the public employer. A collective bargaining agreement or arbitrator's award may provide for benefits conditional upon specified funds to be obtained by the public employer, but the agreement shall provide either for automatic reduction of such conditional benefits or for additional bargaining if the funds are not obtained or if a lesser amount is obtained.

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.

8. *a.* The salaries of all public employees of the state under a merit system and all other subjects within the scope of negotiations pursuant to the provisions of [section 20.9](#) regarding public employees of the state shall be negotiated with the governor or the governor's designee on a statewide basis, except those subjects excluded from the scope of negotiations pursuant to the provisions of [section 20.9, subsection 3](#).

b. For the negotiation of such a proposed, statewide collective bargaining agreement to become effective in the year following an election described in [section 39.9](#), a ratification election referred to in [section 20.17, subsection 4](#), shall not be held, and the parties shall not request arbitration as provided in [section 20.22, subsection 1](#), until at least two weeks after the date of the beginning of the term of office of the governor in that year as prescribed in the Constitution of the State of Iowa. On or after the beginning of the term of office of the governor in that year as prescribed in the Constitution of the State of Iowa, the governor shall have the authority to reject such a proposed statewide collective bargaining agreement. If the governor does so, the parties shall commence collective bargaining in accordance with [section 20.17](#). Such negotiation shall be complete not later than March 15 of that year, unless the parties mutually agree to a different deadline. The board shall adopt rules pursuant to [chapter 17A](#) providing for alternative deadlines for the completion of the procedures provided in [sections 20.17, 20.19, 20.20, and 20.22](#) for negotiation of such statewide collective bargaining agreements in such years, which deadlines may be waived by mutual agreement of the parties.

9. The negotiation of a proposed collective bargaining agreement by representatives of a state public employer and a state employee organization shall be complete not later than March 15 of the year when the agreement is to become effective. The board shall provide, by rule, a date on which any impasse item must be submitted to binding arbitration and for such other procedures as deemed necessary to provide for the completion of negotiations of proposed state collective bargaining agreements not later than March 15. The date selected for the mandatory submission of impasse items to binding arbitration shall be sufficiently in advance of March 15 to ensure that the arbitrator's award can be reasonably made before March 15.

10. *a.* In the absence of an impasse agreement negotiated pursuant to [section 20.19](#) which provides for a different completion date, public employees represented by a certified employee organization who are teachers licensed under [chapter 256, subchapter VII, part 3](#), and who are employed by a public employer which is a school district or area education agency shall complete the negotiation of a proposed collective bargaining agreement not later than May 31 of the year when the agreement is to become effective. The board shall provide, by rule, a date on which impasse items in such cases must be submitted to binding arbitration and for such other procedures as deemed necessary to provide for the completion of negotiations of proposed collective bargaining agreements not later than May 31. The date selected for the mandatory submission of impasse items to binding arbitration in such cases shall be sufficiently in advance of May 31 to ensure that the arbitrator's award can be reasonably made by May 31.

b. In the absence of an impasse agreement negotiated pursuant to [section 20.19](#) which provides for a different completion date, public employees represented by a certified employee organization who are employed by a public employer which is a community college shall complete the negotiation of a proposed collective bargaining agreement not later than May 31 of the year when the agreement is to become effective. The board shall provide, by rule, a date on which impasse items in such cases must be submitted to binding

arbitration and for such other procedures as deemed necessary to provide for the completion of negotiations of proposed collective bargaining agreements not later than May 31. The date selected for the mandatory submission of impasse items to binding arbitration in such cases shall be sufficiently in advance of May 31 to ensure that the arbitrator's award can be reasonably made by May 31.

c. Notwithstanding the provisions of paragraphs “a” and “b”, the May 31 deadline may be waived by mutual agreement of the parties to the collective bargaining agreement negotiations.

[C75, 77, 79, 81, §20.17]

89 Acts, ch 296, §8; 90 Acts, ch 1037, §3; 91 Acts, ch 174, §3; 92 Acts, ch 1011, §1; 92 Acts, ch 1212, §2; 92 Acts, ch 1227, §11; 2010 Acts, ch 1165, §19 – 22; 2017 Acts, ch 2, §10, 11, 26, 27; 2023 Acts, ch 19, §2537

Referred to in §20.1, 20.15, 20.22, 273.22, 275.33

State merit system, see [chapter 8A, subchapter IV](#)

20.18 Grievance procedures.

1. An agreement with an employee organization which is the exclusive representative of public employees in an appropriate unit may provide procedures for the consideration of public employee and employee organization grievances over the interpretation and application of agreements. Negotiated procedures may provide for binding arbitration of public employee and employee organization grievances over the interpretation and application of existing agreements. An arbitrator's decision on a grievance may not change or amend the terms, conditions, or applications of the collective bargaining agreement. Such procedures shall provide for the invoking of arbitration only with the approval of the employee organization in all instances, and in the case of an employee grievance, only with the additional approval of the public employee. The costs of arbitration shall be shared equally by the parties.

2. Public employees of the state or public employees covered by civil service shall follow either the grievance procedures provided in a collective bargaining agreement, or in the event that grievance procedures are not provided, shall follow grievance procedures established pursuant to [chapter 8A, subchapter IV](#), or [chapter 400](#), as applicable.

[C75, 77, 79, 81, §20.18]

86 Acts, ch 1118, §1; 2003 Acts, ch 145, §145; 2010 Acts, ch 1165, §23

Referred to in §235A.15

20.19 Impasse procedures — agreement of parties.

1. As the first step in the performance of their duty to bargain, the public employer and the employee organization shall endeavor to agree upon impasse procedures. Such agreement shall provide for implementation of these impasse procedures not later than one hundred twenty days prior to the certified budget submission date of the public employer. However, if public employees represented by the employee organization are teachers licensed under [chapter 256, subchapter VII, part 3](#), and the public employer is a school district or area education agency, the agreement shall provide for implementation of impasse procedures not later than one hundred twenty days prior to May 31 of the year when the collective bargaining agreement is to become effective. If the public employer is a community college, the agreement shall provide for implementation of impasse procedures not later than one hundred twenty days prior to May 31 of the year when the collective bargaining agreement is to become effective. If the public employer is not subject to the budget certification requirements of [section 24.17](#) and other applicable sections, the agreement shall provide for implementation of impasse procedures not later than one hundred twenty days prior to the date the next fiscal or budget year of the public employer commences. If the parties fail to agree upon impasse procedures under the provisions of [this section](#), the impasse procedures provided in [sections 20.20](#) and [20.22](#) shall apply.

2. Parties who by agreement are utilizing a cooperative alternative bargaining process shall, at the outset of such process, agree upon a method and schedule for the completion of

impasse procedures should they fail to reach a collective bargaining agreement through the use of such alternative bargaining process.

[C75, 77, 79, 81, §20.19]

91 Acts, ch 174, §4; 92 Acts, ch 1011, §2; 92 Acts, ch 1227, §12; 2010 Acts, ch 1193, §107; 2021 Acts, ch 80, §11; 2023 Acts, ch 19, §2538

Referred to in §20.17, 20.20

20.20 Mediation.

In the absence of an impasse agreement negotiated pursuant to [section 20.19](#) or the failure of either party to utilize its procedures, one hundred twenty days prior to the certified budget submission date, or one hundred twenty days prior to May 31 of the year when the collective bargaining agreement is to become effective if public employees represented by the employee organization are teachers licensed under [chapter 256, subchapter VII, part 3](#), and the public employer is a school district or area education agency, the board shall, upon the request of either party, appoint an impartial and disinterested person to act as mediator. If the public employer is a community college, and in the absence of an impasse agreement negotiated pursuant to [section 20.19](#) or the failure of either party to utilize its procedures, one hundred twenty days prior to May 31 of the year when the collective bargaining agreement is to become effective, the board, upon the request of either party, shall appoint an impartial and disinterested person to act as mediator. If the public employer is not subject to the budget certification requirements of [section 24.17](#) or other applicable sections and in the absence of an impasse agreement negotiated pursuant to [section 20.19](#), or the failure of either party to utilize its procedures, one hundred twenty days prior to the date the next fiscal or budget year of the public employer commences, the board, upon the request of either party, shall appoint an impartial and disinterested person to act as a mediator. It shall be the function of the mediator to bring the parties together to effectuate a settlement of the dispute, but the mediator may not compel the parties to agree.

[C75, 77, 79, 81, §20.20]

91 Acts, ch 174, §5; 92 Acts, ch 1011, §3; 92 Acts, ch 1227, §13; 2010 Acts, ch 1193, §108; 2023 Acts, ch 19, §2539

Referred to in §20.17, 20.19

20.21 Fact-finding. Repealed by 2010 Acts, ch 1165, §31.

20.22 Binding arbitration.

1. If an impasse persists ten days after the mediator has been appointed, the board shall have the power, upon request of either party, to arrange for arbitration, which shall be binding. The request for arbitration shall be in writing and a copy of the request shall be served upon the other party.

2. Each party shall serve its final offer on each of the impasse items upon the other party within four days of the board's receipt of the request for arbitration, or by a deadline otherwise agreed upon by the parties. The parties may continue to negotiate all offers until an agreement is reached or an award is rendered by the arbitrator. The full costs of arbitration under [this section](#) shall be shared equally by the parties to the dispute.

3. The submission of the impasse items to the arbitrator shall be limited to those items upon which the parties have not reached agreement. With respect to each such item, the arbitrator's award shall be restricted to the final offers on each impasse item submitted by the parties to the arbitrator, except as provided in [subsection 10](#), paragraph "b".

4. Upon the filing of the request for arbitration, a list of five arbitrators shall be served upon the parties by the board. Within five days of service of the list, the parties shall determine by lot which party shall remove the first name from the list and the parties shall then alternately remove names from the list until the name of one person remains, who shall become the arbitrator. The parties shall immediately notify the board of their selection and the board shall notify the arbitrator. After consultation with the parties, the arbitrator shall set a time and place for an arbitration hearing.

5. The arbitrator shall at no time engage in an effort to mediate or otherwise settle the dispute in any manner other than that prescribed in [this section](#).

6. From the time the board notifies the arbitrator of the selection of the arbitrator until such time as the arbitrator's selection on each impasse item is made, there shall be no discussion concerning recommendations for settlement of the dispute by the arbitrator with parties other than those who are direct parties to the dispute.

7. For an arbitration involving a bargaining unit that has at least thirty percent of members who are public safety employees, the arbitrator shall consider and specifically address in the arbitrator's determination, in addition to any other relevant factors, the following factors:

a. Past collective bargaining contracts between the parties including the bargaining that led up to such contracts.

b. Comparison of wages, hours, and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved.

c. The interests and welfare of the public, the ability of the public employer to finance economic adjustments, and the effect of such adjustments on the normal standard of services.

8. For an arbitration involving a bargaining unit that does not have at least thirty percent of members who are public safety employees, the following shall apply:

a. The arbitrator shall consider and specifically address in the arbitrator's determination, in addition to any other relevant factors, the following factors:

(1) Comparison of base wages, hours, and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved. To the extent adequate, applicable data is available, the arbitrator shall also compare base wages, hours, and conditions of employment of the involved public employees with those of private sector employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved.

(2) The interests and welfare of the public.

(3) The financial ability of the employer to meet the cost of an offer in light of the current economic conditions of the public employer. The arbitrator shall give substantial weight to evidence that the public employer's authority to utilize funds is restricted to special purposes or circumstances by state or federal law, rules, regulations, or grant requirements.

b. The arbitrator shall not consider the following factors:

(1) Past collective bargaining agreements between the parties or bargaining that led to such agreements.

(2) The public employer's ability to fund an award through the increase or imposition of new taxes, fees, or charges, or to develop other sources of revenues.

9. a. The arbitrator may administer oaths, examine witnesses and documents, take testimony and receive evidence, and issue subpoenas to compel the attendance of witnesses and the production of records. The arbitrator may petition the district court at the seat of government or of the county in which the hearing is held to enforce the order of the arbitrator compelling the attendance of witnesses and the production of records.

b. Except as required for purposes of the consideration of the factors specified in [subsection 7](#), paragraphs "a" through "c", and [subsection 8](#), paragraph "a", subparagraphs (1) through (3), the parties shall not introduce, and the arbitrator shall not accept or consider, any direct or indirect evidence regarding any subject excluded from negotiations pursuant to [section 20.9](#).

10. a. The arbitrator shall select within fifteen days after the hearing the most reasonable offer, in the arbitrator's judgment, of the final offers on each impasse item submitted by the parties.

b. (1) However, for an arbitration involving a bargaining unit that does not have at least thirty percent of members who are public safety employees, with respect to any increase in base wages, the arbitrator's award shall not exceed the lesser of the following percentages in any one-year period in the duration of the bargaining agreement:

(a) Three percent.

(b) A percentage equal to the increase in the consumer price index for all urban consumers for the midwest region, if any, as determined by the United States department of labor, bureau of labor statistics, or a successor index. Such percentage shall be the change

in the consumer price index for the twelve-month period beginning eighteen months prior to the month in which the impasse item regarding base wages was submitted to the arbitrator and ending six months prior to the month in which the impasse item regarding base wages was submitted to the arbitrator.

(2) To assist the parties in the preparation of their final offers on an impasse item regarding base wages, the board shall provide information to the parties regarding the change in the consumer price index for all urban consumers for the midwest region for any twelve-month period. The department of workforce development shall assist the board in preparing such information upon request.

11. The selections by the arbitrator and items agreed upon by the public employer and the employee organization, shall be deemed to be the collective bargaining agreement between the parties.

12. The determination of the arbitrator shall be final and binding subject to the provisions of [section 20.17, subsection 6](#). The arbitrator shall give written explanation for the arbitrator's selections and inform the parties of the decision.

[C75, 77, 79, 81, §20.22]

[2008 Acts, ch 1032, §201; 2010 Acts, ch 1165, §24 – 29; 2017 Acts, ch 2, §12, 13, 26, 27](#)

Referred to in [§20.17, 20.19](#)

20.23 Legal actions.

Any employee organization and public employer may sue or be sued as an entity under the provisions of [this chapter](#). Service upon the public employer shall be in accordance with law or the rules of civil procedure. Nothing in [this chapter](#) shall be construed to make any individual or the individual's assets liable for any judgment against a public employer or an employee organization.

[C75, 77, 79, 81, §20.23]

20.24 Notice and service — electronic filing system.

The board shall by rule establish an electronic filing system for the filing or service of any notice or other document required or permitted by law to be filed with or served on or filed or served by the board. Unless otherwise provided by law, the board may by rule require the filing or service of such notice or other document through the system, notwithstanding the provisions of [chapter 17A](#) concerning service or filing by mail. Any notice or other document not required by rule to be filed or served through the system shall be filed or served in accordance with [chapter 17A](#). Unless otherwise provided by law, prescribed time periods shall commence from the date of filing or service through the system.

[C75, 77, 79, 81, §20.24]

[2010 Acts, ch 1165, §30; 2014 Acts, ch 1004, §1](#)

20.25 Internal conduct of employee organizations.

1. Every employee organization which is certified as a representative of public employees under the provisions of [this chapter](#) shall file with the board a registration report, signed by its president or other appropriate officer. The report shall be in a form prescribed by the board and shall be accompanied by two copies of the employee organization's constitution and bylaws. A filing by a national or international employee organization of its constitution and bylaws shall be accepted in lieu of a filing of such documents by each subordinate organization. All changes or amendments to such constitutions and bylaws shall be promptly reported to the board.

2. Every employee organization shall file with the board an annual report and an amended report whenever changes are made. The reports shall be in a form prescribed by the board, and shall provide the following information:

a. The names and addresses of the organization, any parent organization or organizations with which it is affiliated, the principal officers, and all representatives.

b. The name and address of its local agent for service of process.

c. A general description of the public employees the organization represents or seeks to represent.

- d. The amounts of the initiation fee and monthly dues members must pay.
 - e. A pledge, in a form prescribed by the board, that the organization will comply with the laws of the state and that it will accept members without regard to age, race, sex, religion, national origin or physical disability as provided by law.
 - f. A financial report and audit.
3. The constitution or bylaws of every employee organization shall provide that:
 - a. Accurate accounts of all income and expenses shall be kept, and annual financial report and audit shall be prepared, such accounts shall be open for inspection by any member of the organization, and loans to officers and agents shall be made only on terms and conditions available to all members.
 - b. Business or financial interests of its officers and agents, their spouses, minor children, parents or otherwise, that conflict with the fiduciary obligation of such persons to the organization shall be prohibited.
 - c. Every official or employee of an employee organization who handles funds or other property of the organization, or trust in which an organization is interested, or a subsidiary organization, shall be bonded. The amount, scope, and form of the bond shall be determined by the board.
 4. The governing rules of every employee organization shall provide for periodic elections by secret ballot subject to recognized safeguards concerning the equal right of all members to nominate, seek office, and vote in such elections, the right of individual members to participate in the affairs of the organization, and fair and equitable procedures in disciplinary actions.
 5. The board shall prescribe rules necessary to govern the establishment and reporting of trusteeships over employee organizations. Establishment of such trusteeships shall be permitted only if the constitution or bylaws of the organization set forth reasonable procedures.
 6. An employee organization that has not registered or filed an annual report, or that has failed to comply with other provisions of [this chapter](#), shall not be certified. Certified employee organizations failing to comply with [this chapter](#) may have such certification revoked by the board. Prohibitions may be enforced by injunction upon the petition of the board to the district court of the county in which the violation occurs. Complaints of violation of [this section](#) shall be filed with the board.
 7. Upon the written request of any member of a certified employee organization, the auditor of state may audit the financial records of the certified employee organization.
- [C75, 77, 79, 81, §20.25]

20.26 Employee organizations — political contributions — penalties.

1. An employee organization shall not make any direct or indirect contribution out of the funds of the employee organization to any political party or organization or in support of any candidate for elective public office.
2. Any employee organization which violates the provisions of [this section](#) or fails to file any required report or affidavit or files a false report or affidavit shall, upon conviction, be subject to a fine of not more than two thousand dollars.
3. Any person who willfully violates [this section](#), or who makes a false statement knowing it to be false, or who knowingly fails to disclose a material fact shall, upon conviction, be subject to a fine of not more than one thousand dollars or imprisoned for not more than thirty days or shall be subject to both such fine and imprisonment. Each individual required to sign affidavits or reports under [this section](#) shall be personally responsible for filing such report or affidavit and for any statement contained therein the individual knows to be false.
4. Nothing in [this section](#) shall be construed to prohibit voluntary contributions by individuals to political parties or candidates, provided that such contributions are not made through payroll deductions.
5. Nothing in [this section](#) shall be construed to limit or deny any civil remedy which may exist as a result of action which may violate [this section](#).

[C75, 77, 79, 81, §20.26]

[2017 Acts, ch 2, §14, 26, 27; 2017 Acts, ch 54, §76](#)

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.

[C75, 77, 79, 81, §20.27]

20.28 Inconsistent statutes — effect.

A provision of the Code which is inconsistent with any term or condition of a collective bargaining agreement which is made final under [this chapter](#) shall supersede the term or condition of the collective bargaining agreement unless otherwise provided by the general assembly. A provision of a proposed collective bargaining agreement negotiated according to [this chapter](#) which conflicts with the Code shall not become a provision of the final collective bargaining agreement until the general assembly has amended the Code to remove the conflict.

[C79, 81, §20.28]

20.29 Filing agreement — public access — internet site.

1. Collective bargaining agreements shall be in writing and shall be signed by the parties.
2. A copy of a collective bargaining agreement entered into between a public employer and a certified employee organization and made final under [this chapter](#) shall be filed with the board by the public employer within ten days of the date on which the agreement is entered into.

3. Copies of collective bargaining agreements entered into between the state and the state employees' bargaining representatives and made final under [this chapter](#) shall be filed with the secretary of state and be made available to the public at cost.

4. The board shall maintain an internet site that allows searchable access to a database of collective bargaining agreements and other collective bargaining information.

[C79, 81, §20.29]

[2017 Acts, ch 2, §15, 26, 27](#)

20.30 Supervisory member — no reduction before retirement.

A supervisory member of any department or agency employed by the state of Iowa shall not be granted a voluntary reduction to a nonsupervisory rank or grade during the thirty-six months preceding retirement of the member. A member of any department or agency employed by the state of Iowa who retires in less than thirty-six months after voluntarily requesting and receiving a reduction in rank or grade from a supervisory to a nonsupervisory position shall be ineligible for a benefit to which the member is entitled as a nonsupervisory member but is not entitled as a supervisory member.

[C81, §20.30]

[2017 Acts, ch 2, §16, 26, 27](#)

20.31 Mediator privilege.

1. As used in [this section](#), unless the context otherwise requires:

a. “*Mediation*” means a process in which an impartial person attempts to facilitate the resolution of a dispute by promoting voluntary agreement of the parties to the dispute. Mediation shall be deemed to commence upon the mediator's receipt of notice of assignment and shall be deemed to conclude when the dispute is resolved.

b. “*Mediator*” means a member or employee of the board or any other person appointed or requested by the board to assist parties in resolving disputes involving collective bargaining impasses, contested cases, other agency cases, or contract grievances.

2. A mediator shall not be required to testify in any judicial, administrative, arbitration, or grievance proceeding regarding any matters occurring in the course of a mediation, including any verbal or written communication or behavior, other than facts relating exclusively to the timing or scheduling of mediation. A mediator shall not be required to produce or disclose any documents, including notes, memoranda, or other work product, relating to mediation,

other than documents relating exclusively to the timing or scheduling of mediation. [This subsection](#) shall not apply in any of the following circumstances:

- a. The testimony, production, or disclosure is required by statute.
- b. The testimony, production, or disclosure provides evidence of an ongoing or future criminal activity.
- c. The testimony, production, or disclosure provides evidence of child abuse as defined in [section 232.68, subsection 2](#).

[98 Acts, ch 1062, §7; 2017 Acts, ch 2, §17, 26, 27](#)

20.32 Transit employees — applicability.

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

[2017 Acts, ch 2, §18, 26, 27](#)

20.33 Retention of costs and fees.

1. All moneys paid in advance by the board and subsequently taxed as a cost to a party or parties pursuant to [section 20.6, subsection 6](#), and [section 20.11, subsection 3](#), shall, when reimbursed by the party or parties taxed under those sections, be retained by the board as appropriated receipts, as defined in [section 8.2](#), and used exclusively to offset the cost of the certified shorthand reporter reporting the proceeding and of any transcript requested by the board.

2. All fees established and collected by the board pursuant to [section 20.6, subsection 7](#), shall be retained by the board as appropriated receipts, as defined in [section 8.2](#), and used exclusively for the purpose of covering the cost of elections required pursuant to [section 20.15](#), including payment for the services of any vendor retained by the board to conduct or assist in the conduct of such an election.

[2017 Acts, ch 169, §33; 2024 Acts, ch 1185, §108](#)

20.34 Judicial review.

Notwithstanding [chapter 17A](#), in a petition for judicial review of a decision of the board in a contested case under [this chapter](#), the opposing party shall be named the respondent, and the board shall not be named as a respondent. Judicial review of agency action by the board under [this chapter](#) is not subject to [chapter 17A](#).

[2023 Acts, ch 19, §2161](#)

Referred to in §17A.19