IN THE IOWA DISTRICT COURT FOR POLK COUNTY

AFSCME IOWA COUNCIL 61, JOHNATHAN GOOD, RYAN DE VRIES, TERRA KINNEY AND SUSAN BAKER, Plaintiffs, vs. **STATE OF IOWA AND IOWA PUBLIC EMPLOYMENT RELATIONS BOARD,** Defendants.	**Case No. CVCV053572** **RULING AND ORDER ON MOTIONS FOR SUMMARY JUDGMENT**

On September 15, 2017, Plaintiffs' and Defendants' motions for summary judgment came on for hearing. Plaintiffs, AFSCME Iowa Council 61, Johnathan Good, Ryan De Vries, Terra Kinney and Susan Baker (collectively "AFSCME") appeared through their attorneys Mark T. Hedberg and Sarah M. Baumgartner. Defendants, State of Iowa and the Iowa Public Employment Relations Board (hereinafter collectively referred to as "State") appeared through their attorney Matthew C. McDermott. After reviewing the entire record and hearing evidence and arguments of counsel, the Court enters the following Ruling:

STATEMENT OF THE CASE

The parties have filed cross motions for summary judgment. Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Fogel v. Trustees of Iowa College*, 446 N.W.2d 451, 454 (Iowa 1989). No fact question exists if the only dispute concerns the legal consequences flowing from undisputed facts. *Brown v. Monticello State Bank*, 360 N.W.2d 81, 84 (Iowa 1984). In such circumstances, summary judgment is proper. *Jacobs v. Stover*, 243 N.W.2d 642, 643 (Iowa 1976). While the parties have not agreed to a stipulated record of legislative facts, the following

key material facts are undisputed. The parties agree that summary judgment is the appropriate remedy to resolve the constitutional issue presented.

STATEMENT OF THE FACTS

Public sector collective bargaining has been an issue in Iowa for decades. In 1969, Governor Robert D. Ray announced his support for compromise legislation governing collective bargaining for public employees. TO PROMOTE HARMONIOUS AND COOPERATIVE RELATIONSHIPS: A BRIEF HISTORY OF PUBLIC SECTOR COLLECTIVE BARGAINING IN IOWA, 1966 TO 2016, University of Iowa Labor Center 3 (2016); (P. App. 530). The Public Employee Relations Act was passed in 1974, with bi-partisan support. *Id.*; (P. App. 530). "The act reflected careful compromise by Iowa's public employers and employees, many of whom had come together to advocate for Iowans to adopt a fair and binding legal process to settle disputes." *Id.* at 1; (P. App. 528). The preamble to Chapter 20 read:

> The general assembly declares that it is the public policy of the state to promote harmonious and co-operative 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.

Iowa Code § 20.1 (1975). The Act sought to achieve three main goals. First, to "[p]romote the voluntary negotiation of collective bargaining agreements between public sector employers and workers." A BRIEF HISTORY OF PUBLIC SECTOR COLLECTIVE BARGAINING IN IOWA at 5; (P. App. 532). Second, to "[p]rovide an orderly method for resolving bargaining disputes in those cases where parties cannot agree voluntarily." *Id.*; (P. App. 532). And third, to "[p]revent strikes by public sector workers." *Id.*; (P. App. 532). The Act also required the establishment of the Public

Employment Relations Board, which was to be responsible for the administration of Chapter 20. Iowa Code § 20.5-20.6 (1975).

In 2017, the Iowa Legislature amended Iowa Code Chapter 20 through H.F. 291. Under this amendment, a bargaining unit with at least thirty percent of members who are "Public Safety Employees" retained greater bargaining rights than employees in other bargaining units.

H.F. 291 defines "Public Safety Employee" as follows:

> *"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.

Iowa Code §20.3 (10A) (2017).

H.F. 291 grants "Public Safety Employees" ("PSEs") bargaining rights not granted to public employees who are not so defined. Iowa Code §20.9(1). H.F. 291 grants units with thirty percent or more PSEs bargaining rights not granted to public employees in units below the thirty percent threshold. *Id.* PSEs in bargaining units above the thirty percent threshold retain the bargaining rights they had before H.F. 291 was enacted. *Id.* Public employees in units below the thirty percent threshold of PSEs retain only base wage as a mandatory subject of bargaining. *Id.* All other subjects that were mandatory subjects of bargaining before H.F. 291 are permissive subjects of bargaining after H.F. 291. See *Id.*

All collective bargaining units of State employees who are defined by H.F. 291 are represented by AFSCME Iowa Council 61. Neither AFSCME nor any other union is prevented from collective bargaining on behalf of PSEs as long as the union's bargaining unit meets the thirty percent or greater PSE threshold pursuant to H.F. 291. Corrections officers, psychiatric nurses and attendants, Regents police, state fire fighters, peace officers employed by the Department of Commerce, parole officers, and DOT emergency responders correlate to state classifications that are represented by AFSCME Iowa Council 61. Healthcare facility workers, corrections officers, peace officers, emergency medical service providers, and fire fighters, provide services important to public health and safety.

The definition of "Public Safety Employee" of H.F. 291 excludes certain positions that may have been traditionally considered public safety employees. For example, Regents police officers are excluded from the definition of "Public Safety Employee" under H.F. 291, even though Iowa Code section 262.13 states that "[s]uch officers shall have the same powers, duties, privileges and immunities as conferred on regular peace officers." Regents police and regular peace officers often work together and share similar duties and responsibilities

PSEs with firefighting responsibilities and public employees with firefighting responsibilities who are not so defined could have certain job responsibilities in common. Airport fire fighters are not considered PSEs even though they perform firefighting duties similar to those performed by firefighters covered by the definition. PSEs and public employees who are not so defined could have greater or lesser job responsibilities.

To date there have been no police union strikes in Iowa. There have not been any public employee strikes since the enactment of the Iowa Public Employment Relations Act in 1974.

GOVERNING PRINCIPLES

The Iowa Supreme Court has a long history of independent adjudication of state constitutional issues. *State v. Coleman*, 890 N.W.2d 284, 296 (Iowa 2017). In recent decades, the Court has reemphasized this independent constitutional tradition. *Id.* Our Supreme Court jealously reserves the right to develop an independent framework for construction of the Equal Protection Clause of the Iowa Constitution. *Racing Ass'n of Cent. Iowa v. Fitzgerald (RACI),* 675 N. W.2d 1, 5 (Iowa 2004). Even when considering established federal equal protection principles, the Iowa Supreme Court may apply them differently under the Iowa Constitution. *Next Era Energy Resources LLC v. Iowa Utilities Bd*., 815 N.W.2d 30, 45-47 (Iowa 2012).

The Court rejects Plaintiffs' contention that H.F. 291 "red circles" AFSCME bargaining units or impinges on freedom of association with AFSCME. Where, as here, the classification does not involve a suspect class or a fundamental right, the rational basis test applies. *Doe v. New London Community School Dist*., 848 N.W.2d 347, 356 (Iowa 2014).

The Iowa Supreme Court applies a very deferential standard under the rational basis test. *Varnum v. Brien*, 763 N.W.2d 862, 879 (Iowa 2009). The burden is not on the government to justify its action. The challenger has the burden to rebut a presumption of constitutionality. *Racing Ass'n of Cent. Iowa v. Fitzgerald (RACI),* 675 N.W.2d 1, 8 (Iowa 2004). The statute is presumed constitutional unless the challenging party meets its burden to negate every reasonable basis for the classification that might support disparate treatment. *Horsfield Materials, Inc. v. City of Dyersville*, 834 N.W.2d 444, 458 Iowa 2013); *Bierkamp v. Rogers*, 293 N.W.2d 577, 579-80 (Iowa 1980); *FCC v. Beach Commc'ns, Inc*., 508 U.S.307, 315, 113 S.Ct. 2096, 2102, 124 L.Ed.2d 211, 221 (1983). The Court will not declare a statute unconstitutional under the rational

basis test unless it "clearly, palpably and without a doubt infringe[s] upon the constitution." *Ames Rental Prop. Ass'n v. City of Ames*, 736 N.W.2d 255, 259 (Iowa 2007).

Under the Iowa Constitution, legislatively enacted classifications are not "virtually unreviewable." But see *Beach*, 508 U.S. at 316 (Congressional line-drawing is "virtually unreviewable" under the federal rational basis test.). For example, taxation does not require optimal or perfect line-drawing by the legislature. Instead, it requires only that the line actually drawn be a rational one. "But there is a point beyond which the State cannot go without violating the Equal Protection Clause. The State ... may not resort to a classification that is palpably arbitrary." *LSCP, LLLP v. Kay-Decker*, 861 N.W.2d 846, 857 (Iowa 2015)(quoting *Allied Stores of Ohio, Inc. v. Bowers,* 358 U.S. 522, 527, 79 S.Ct. 437, 441, 3 L.Ed.2d 480, 485 (1959)). The Court is empowered to review the classification to see if it is arbitrary or irrational.

Under the separation of powers delineated by the Iowa Constitution, judicial review is the prerogative of the judicial branch. *Varnum*, 763 N.W.2d at 875 ("This court, consistent with its role to interpret the law and resolve disputes, now has the responsibility to determine if the law enacted by the legislative branch and enforced by the executive branch violates the Iowa Constitution.") In deference to the legislature, a statute will satisfy the requirements of equal protection, "so long as there is a plausible policy reason for the classification, the legislative facts on which the classification is apparently based rationally may have been considered to be true by the governmental decisionmaker, and the relationship of the classification to its goal is not so attenuated as to render the distinction arbitrary or irrational." *Id.* at 879; *Fitzgerald v. Racing Ass'n of Cent, Iowa*, 539 U.S. 103, 107, 123 S.Ct. 2156, 2159, 156 L.Ed.2d 97, 103 (2003). Although the rational basis test is "deferential to legislative judgment, 'it is not a toothless one' in Iowa." *Varnum*, 763 N.W.2d at 879 (quoting *RACI*, 675 N.W.2d at 7 and *Mathews v. de*

Castro, 429 U.S. 181, 185, 97 S.Ct. 431, 434, 50 L.Ed.2d 389, 394 (1976)). "…[T]he deference built into the rational basis test is not dispositive because this court engages in a meaningful review of all legislation challenged on equal protection grounds by applying the rational basis test to the facts of each case." *Id*., n 7 (citing *Bierkamp*, 293 N.W.2d at 581)). "This is the heart of judicial review." *King v. State*, 818 N.W.2d 1, 79 (Iowa 2012)(Appel, J. dissenting).

The Equal Protection Clause of the Iowa Constitution guarantees "[a]ll laws of a general nature shall have a uniform operation; the General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms shall not equally belong to all citizens." Iowa Const., Art. I, § 6. In Iowa, "equal protection demands that laws treat alike all people who are 'similarly situated with respect to the legitimate purposes of the law.'" *Varnum*, 763 N.W.2d 862, 882 (Iowa 2009) (quoting *RACI*, 675 N.W.2d at 7.).

As a threshold matter, a party claiming a statute violates the Iowa Equal Protection Clause must establish disparate treatment. *McQuistion v. City of Clinton*, 872 N.W.2d 817, 831 (Iowa 2015). The Equal Protection Clause requires that similarly situated persons be treated alike. If people are not similarly situated, their dissimilar treatment does not violate equal protection. *Bowers v. Polk Cnty Bd. of Supervisors*, 638 N.W.2d 682, 689 (Iowa 2002) (citation omitted). Once disparate treatment of similarly situated individuals is established, the claimant must prove the reasons for the classification in the statute were not sufficiently important or related to the governmental interest. *McQuistion*, 872 N.W.2d at 831.

The Iowa Supreme Court generally considers the federal and state equal protection clauses to be identical in scope, import, and purpose. *Residential and Agricultural Advisory Committee, LLC. v. Dyersville City Council*, 888 N.W.2d 24, 50 (Iowa 2016)(citations and quotation omitted). Under the Fourteenth Amendment to the United States Constitution, the

Supreme Court has succinctly stated the rational basis test as "whether the classifications drawn in a statute are reasonable in light of its purpose." *Bierkamp*, 293 N.W.2d at 580 (quoting *McLaughlin v. Florida*, 379 U.S. 184, 191, 85 S.Ct. 283, 288, 13 L.Ed.2d. 222, 228 (1964)). Based on this principle of the federal rational basis test, the Iowa Supreme Court has developed a three-part framework to determine if the rational basis test is satisfied under Article I, section 6 of the Iowa Constitution. *Residential and Agricultural Advisory Committee*, 888 N.W.2d at 50; *McQuistion*, 872 N.W.2d at 830-32.

First, the Court must determine whether there is a valid, "realistically conceivable" purpose for the classification that serves a government interest. *Residential and Agricultural Advisory Committee*, 888 N.W.2d at 50; *McQuistion*, 872 N.W.2d at 831. In order to be "realistically conceivable," the statute cannot be "so overinclusive and underinclusive as to be irrational." *Residential and Agricultural Advisory Committee*, 888 N.W.2d at 50 (quoting *Horsfield*, 834 N.W.2d at 458). If a classification involves "extreme degrees" of overinclusion or underinclusion in relation to any particular goal, it cannot reasonably be said to further that goal. *LSCP, LLLP*, 861 N.W.2d at 861; *Bierkamp*, 293 N.W.2d at 584.

Second, the Court must decide whether the identified reason for the classification has any basis in fact. *Residential and Agricultural Advisory Committee*, 888 N.W.2d at 50; *McQuistion*, 872 N.W. 2d at 831. "RACI still only requires that the purported rational basis be 'realistically conceivable' and have a 'basis in fact'; it explicitly 'does not require 'proof' in the traditional sense.'" *King*, 818 N.W.2d at 30 (quoting *RACI*, 675 N.W.2d at 7–8 n. 4; *Miller v. Boone Community Hospital*, 394 N.W.2d 776, 779 (Iowa 1986)). In order to discern a "basis in fact," the Court will undertake some examination of the credibility of the asserted factual basis for the challenged classification. Actual proof of an asserted justification is not necessary, but the Court

will not simply accept it at face value. The Court must examine it to determine whether it is credible as opposed to specious. *LSCP, LLLP*, 861 N.W.2d at 860; *Quest Corp. v. Iowa State Bd. of Tax Review*, 829 N.W.2d 550, 560 (Iowa 2013); *RACI*, 675 N.W.2d 1, 7, n. 3 (differentiating between "credible" and "specious").

Third, the Court evaluates whether the relationship between the classification and its purpose "is so weak that the classification must be viewed as arbitrary." *Residential and Agricultural Advisory Committee*, 888 N.W.2d at 50 (quoting *RACI*, 675 N.W.2d at 8.). The relationship of the classification to its goal must not be so attenuated as to render the decision arbitrary or irrational. The Court examines the legitimacy of the end to be achieved and then scrutinizes the means used to achieve that end. *RACI*, 675 N.W.2d at 8 (citations omitted.). "A citizen's guarantee of equal protection is violated if desirable legislative goals are achieved…through wholly arbitrary classification or otherwise invidious discrimination." *LSCP, LLLP*, 861 N.W.2d at 859 (quoting *Federal Land Bank of Omaha v. Arnold*, 426 N.W.2d 153, 156 (Iowa 1988). "The fit between the means and the end can be 'far from perfect 'so long as the relationship 'is not so attenuated as to render the distinction arbitrary or irrational.'" *Qwest Corp.*, 829 N.W.2d at 558 (quoting *Varnum,* 763 N.W.2d at 879 & n. 7 (citation and internal quotation marks omitted)).

ANALYSIS

AFSCME asserts that the amendments to Chapter 20 lack a rational basis for two reasons. First, AFSCME argues the legislative decision to preserve the collective bargaining rights for units comprised of thirty percent or more PSEs is so overinclusive and underinclusive as to be irrational. Second, AFSCME contends the preservation of collective bargaining rights for units

including thirty percent or more PSEs lacks any conceivable rational relationship to a legitimate governmental purpose.

In response, the State relies on the doctrine of Separation of Powers to support the constitutionality of the amendments to Chapter 20. More specifically, the State claims the legislative facts upon which the amendments to Chapter 20 were based may rationally have been considered by the legislature to be true and are not so attenuated as to render the distinction between collective bargaining units of thirty percent or more PSEs and other units arbitrary or irrational and that the Court must defer to the line-drawing decision of the legislature.

Public employees have no constitutionally protected right to organize into unions or to bargain collectively. *State Bd. of Regents v. United Packing House Food and Allied Workers, Local No. 1258*, 175 N.W.2d 110, 112 (Iowa 1970). Collective bargaining rights for public of employees are a creature of statute. In landmark legislation in 1974, the General Assembly passed and Governor Robert D. Ray signed, Iowa Code Chapter 20 permitting public employees to organize and bargain collectively and establishing the Public Employment Relations Board to resolve employment disputes. The legislature created collective bargaining for public employees and has the power to take them away *en toto*. *Gattis v. Gravett*, 806 F.2d 778, 781 (8th Cir. 1989) ("Of course, the State remains free to … amend or terminate its welfare or employment programs." (quoting *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 432 (1982)). However, in H.F. 291, the legislature did not take away collective bargaining rights from all public employees. Instead, the legislature has created classifications of winners and losers among similarly situated unionized individuals who are employed by public employers.

AFSCME claims the thirty percent PSE classification violates the Iowa Equal Protection Clause because it "grant[s] to any citizen, or class of citizens, privileges or immunities, which, upon the same terms shall not equally belong to all citizens." Iowa Const., Art. I, § 6. Thus, the question presented is whether the legislature can constitutionally amend Chapter 20 to take collective bargaining rights away from some, but not all, public employees.

A. Disparate Treatment.

As a threshold matter, AFSCME must establish disparate treatment. AFSCME demonstrated that under H.F. 291, bargaining units of at least thirty percent PSEs keep their bargaining rights. Bargaining units with fewer than thirty percent PSEs lose most of their bargaining rights. PSEs in a bargaining unit with at least thirty percent PSEs are treated differently than their counterparts in a bargaining unit with fewer than thirty percent PSEs. Employees who are not PSEs are treated differently from other employees depending upon whether they are in a bargaining unit of at least thirty percent PSEs or not. Employees who perform public safety functions, like Regents police officers and airport firefighters, but who are not "Public Safety Employees" as defined by the statute are treated differently from similarly situated employees who perform the same public safety function and fall within the statutory definition.

AFSCME proved disparate treatment of similarly situated individuals under H.F. 291. Some unionized public employees are granted privileges and immunities in the form of collective bargaining rights that are not equally granted to all unionized public employees. Now AFSCME must prove that the reasons for the classification in the statute were not sufficiently important or related to the governmental interest under the rational basis test. *McQuistion*, 872 N.W.2d at 831.

B. Three-Part Framework of the Rational Basis Test in Iowa.

1) *Realistically conceivable purpose.*

AFSCME argues the classification of thirty percent PSEs is so overinclusive and underinclusive as to lack a rationally conceivable purpose serving a legitimate governmental interest. Indeed, there are collective bargaining units including public employees who perform public safety functions like law enforcement, firefighting, and corrections that are not included in the statutory definitions of Public Safety Employees. There are public employees who perform non-public safety functions included in units with at least thirty percent PSEs. Thus, at least to some degree, the statutory definition is overinclusive and underinclusive.

But, AFSCME must negate every reasonable basis upon which the classification may be sustained. The government is not required or expected to produce evidence to justify its action. Since the State does not have to produce evidence, and only a plausible justification is required, the rational basis test requires only that the purported justification be realistically conceivable and have a basis in fact. Proof in the traditional sense is not required. *King*, 818 N.W.2d at 27-30.

The State suggests that it is in the public interest that larger collective bargaining units of public safety employees retain greater bargaining rights. The State contends the legislature could rationally be concerned about the consequences to public safety of a strike by public employees including PSEs. The State argues the retained rights of PSEs ensure the availability of PSEs to police strikes by other non-PSE units that may include police officers, such as Regents police. For example, ASFCME represents employees of the University of Iowa including campus police officers. The State suggests that should ASFCME decide go on strike at the University of Iowa, campus police officers might hesitate to cross picket lines while State Troopers would feel free

to do so in order to keep the peace. According to the State, this type of conflict within non-PSE units justifies the overinclusive and underinclusive nature of the classification.

AFSCME counters that a strike by public employee on a state university campus or anywhere else in Iowa is highly unlikely because strikes by public employees remain prohibited under Chapter 20. AFSCME claims the potential of a strike is an irrational fear.

Prior to the passage of the Iowa Public Employment Relations Act in 1974, public employees in Iowa "had joined unions and other associations to advance their collective interests and to pursue the public good." TO PROMOTE HARMONIOUS AND COOPERATIVE RELATIONSHIPS: A BRIEF HISTORY OF PUBLIC SECTOR COLLECTIVE BARGAINING IN IOWA 1966 TO 2016, University of Iowa Labor Center, at 1; (P. App. 528). Public sector unions and associations were permitted to meet with employers "to discuss wages, working conditions and grievances on behalf of those who have agreed to such representation …" *United Packing House Food and Allied Workers, Local No. 1258*, 175 N.W.2d at 112.

The late 1960s and early 1970s saw an increase in labor unrest, strikes and work stoppages by public employees. A BRIEF HISTORY OF PUBLIC SECTOR COLLECTIVE BARGAINING IN IOWA at 1; (P. App. 528). Within a three year period between 1967 and 1970, Des Moines municipal laborers, physical plan workers at the University of Northern Iowa, Des Moines firefighters, Keokuk teachers, and nurses at the Mary Greely Hospital in Ames all organized work stoppages. *Id.*; (P. App. 528). "Various factors led to each of these stoppages, but the most important was the absence of binding arbitration." *Id.*; (P. App. 528) (emphasis removed).

Since the passage of Chapter 20, there have been no public employee strikes. *Id.* at 7; (P. App. 534). While the strike prohibitions and penalties remain in Chapter 20 with the passage of H.F. 291, the delicate balance that led to the careful compromise by Iowa's public employers and

employees has been altered. Based upon the history of labor unrest in Iowa before Chapter 20 was enacted, it is rational for the legislators to consider that the loss of collective bargaining rights of non-PSE units may make work stoppages at least somewhat more likely. While the likelihood of a public sector strike following the passage of Chapter 20 may be reduced by the continued statutory prohibitions and consequences, a strike by public employees including public safety employees is conceivable. The possibility of a strike by public employees, including employees charged with the protection of the public, is a credible and rational concern. It is realistically conceivable. It is not an irrational fear.

Even assuming a strike is improbable, reasonable legislators could also be rationally concerned that public employees who experience a reduction in collective bargaining rights will be more likely to experience low morale and labor unrest. Labor unrest short of a strike could reasonably be considered by legislators to contribute to instability in the public sector workforce. Other jurisdictions have experienced incidents of civil disobedience through sickouts by public employees and "Blue Flu" by law enforcement in response to less desirable terms and conditions of employment. (D. App. 20-43). The State cites numerous news articles about police officers in New York City, Memphis, Tennessee, Selma, Alabama and East Orange, New Jersey calling in sick in large numbers in order to protest issues such as unsafe conditions, low pay, and lack of benefits. (D. App. 26-43).

While strikes or incidents of "Blue Flu" have yet to occur in Iowa, it is not irrational for a legislator to look at these events and consider the possibility of an Iowa "Blue Flu" as the result of a change to collective bargaining laws. Even without overt work stoppages, a reasonable legislature could be rationally concerned about the need to attract and retain a reliable corps of satisfied, well-trained and experienced Public Safety Employees to protect the public in case of a

public emergency including the possibility of labor unrest by other public employees in light of the reduction of their collective bargaining rights. The potential for "Blue Flu" or some other exhibition of labor unrest short of a strike is realistically conceivable.

Even if a case of the "Blue Flu" is unlikely, the legislature could rationally expect many public employees to be disgruntled by the loss of union protection. In light of the impact of H.F. 291 on AFSCME members and other public employees in Iowa, a reasonable legislator could rationally foresee increasing employee job dissatisfaction, lower morale, faster attrition, higher turnover and a diminished ability of public employers to attract and retain workers for public service. Dissatisfied or anxious public employees may well look to the private sector or other employers like the federal government for better pay, more stable benefits, and superior working conditions. While the State does not make this argument, this kind of labor instability in the workforce seems the most probable outcome of H.F. 291. The legislature could rationally establish PSEs as a priority to reduce the risk of dissatisfaction and instability in the ranks of larger units of employees who protect the public. *King*, 818 N.W.2d at 30 (citing *Judicial Branch v. Iowa Dist. Ct.*, 800 N.W.2d 569, 578-79 (Iowa 2011)("Since *RACI*, we have continued to uphold legislative classifications based on judgments the legislature could have made, without requiring evidence or "proof" in either a traditional or nontraditional sense.")

Given the potential for some form of labor unrest following the passage of H.F. 291, a reasonable legislature could rationally conclude that a reliable corps of public safety employees is a priority in order to protect the public in the event of a terrorist attack, a natural disaster, or a public health emergency. While the thirty percent threshold of PSEs creates some degree of overinclusion an underinclusion, the legislature is entitled to act within a reasonable range of rational alternatives. The Court cannot find "extreme degrees" of overinclusion and

underinclusion in relation to the goal of this legislation. *LSCP, LLLP*, 861 N.W.2d at 861; *Bierkamp*, 293 N.W.2d at 584.

Therefore, there is a valid, realistically conceivable purpose for the classification that serves the governmental interest of retaining a reliable force of PSEs in the event of disaster, emergency or labor unrest by public employees. The classification is not so overinclusive or underinclusive in relation to that goal as to be irrational. *Residential and Agricultural Advisory Committee*, 888 N.W.2d at 50.

2) *Basis in fact*.

Chapter 20 retains the following prohibition against strikes by public employees and public employee unions:

> 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.

Iowa Code § 20.12(1) (2017).

The statute retains severe punishments for violating the prohibition of strikes. Under section 20.12(3), "any citizen domiciled within the jurisdictional boundaries of the public employer may petition …" for an injunction. *Id.* § 20.12(3) "[T]he plaintiff need not show that that violation or threatened violation would greatly or irreparably injure the plaintiff." *Id.* The punishment for failure to comply with such an injunction "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 month, or both such fine and imprisonment." *Id.* An employee who fails to comply with the injunction shall be terminated from their employment and ineligible for a position with a public employer for a period of 12 months. *Id.* §20.12(4). Additionally, an employee

organization who fails to comply will be decertified and unable to become recertified for a period of 12 months. *Id.* §20.12(5).

These provisions were included in the original legislation passed in 1974 and have remained unchanged. *Compare* Iowa Code § 20.12 (1975), *with* Iowa Code § 20.12 (2017). Since the passage of the Public Employee Relations Act in 1974, no public employees including those defined as "Public Safety Employees" under HF 291, have organized a strike. Additionally, there has never been a police strike in the State of Iowa.

AFSCME argues that the severe punishments associated with section 20.12 along with the fact that no strikes have occurred since the passage of the Public Employee Relations Act in 1974 demonstrate that the legislature's fear of PSEs striking is not based in fact. Additionally, AFSCME argues that there is no factual basis to support the assertion that the definition of "Public Safety Employee" and the thirty percent threshold laid out in H.F. 291 would serve to prevent strikes.

The State counters that based on legislative facts available to legislators at the time H.F. 291 was debated, there was a rational concern about the availability of PSEs to deal with a natural disaster, terrorist attack or other large scale emergency. The State cites the labor relations issues that took place in Wisconsin around the time a bill similar to H.F. 291 was passed and incidents of "Blue Flu" that have occurred in other cities across the United States. (D. App. 26-43).

In *Wisconsin Educ. Ass'n Council v. Walker*, the Seventh Circuit Court of Appeals held that "Wisconsin was free to determine that the costs of potential labor unrest exceeded the benefits of restricting the public safety unions." 705 F.3d 640, 655 (7th Cir. 2013). "[I]n the wake

of Act 10's proposal and passage, thousands descended on the state capital in protest and numerous teachers organized a sick-out through their unions, forcing schools to close …" *Id.*

While many union members appeared at the Iowa Capitol and attended the public hearing on the H.F.291 to speak out against the bill, there have been no public sector strikes in Iowa. (D. App. 44-46). But that does not mean the legislature's fear of strikes was not based in fact.[1] It is not irrational for an Iowa legislator to look at issues other states are experiencing with collective bargaining and to use those examples in determining solutions for the potentiality of similar issues in Iowa. "Blue Flu" or some other form of sickout by public employees is not beyond the realm of possibility. It is also rational for legislators to consider that public employees who lose their collective bargaining rights will experience dissatisfaction and low morale leading to higher turnover and instability. As a result, it could become more difficult for the State to attract and retain its quality workforce. Legislators would be rightfully and rationally concerned about instability in the public employee workforce. Thus, legislative concern over labor unrest is fact based.

The definition of PSEs and the inclusion of a thirty percent threshold in H.F. 291 is fact based as well because it is rational for the legislature to conclude that certain public safety professions and job classifications are more critical than others in keeping peace and in ensuring public safety. The Iowa legislature could rationally conclude that the cost of potential labor

[1] There is historical precedent in Iowa for public employees to strike in the face of severe consequences. The University of Iowa Labor Center cites the Keokuk Education Association's strike in 1970 as an example.

> Faced with such an intransigent board and no other legal resources, teachers felt they had no other option than to strike. Joined by the district's maintenance employees, who were also in the process of bargaining with the board, teachers walked out, preventing most of the city's schools from operating, until a judge issued an injunction against the KEA and jailed members of its leadership. Seeing local teachers go to jail was too much for many community members to bear, including members of the school board, who broke with the majority and forced negotiations to resume, eventually producing an agreement very much like the one proposed by the mediator.

TO PROMOTE HARMONIOUS AND COOPERATIVE RELATIONSHIPS: A BRIEF HISTORY OF PUBLIC SECTOR COLLECTIVE BARGAINING IN IOWA, 1966 TO 2016, University of Iowa Labor Center, 3 (2016); (P. App. 530).

unrest in collective bargaining units of at least thirty percent PSEs exceeds the benefits of restricting the bargaining rights of PSE units. *Walker*, 705 F.3d at 665. This classification has a plausible and credible basis in fact. *See Beach*, 508 U.S. at 315.

3) *Relationship of classification to purpose.*

"Finally, we must consider whether the relationship between the classification . . . and the purpose of the classification is so weak that the classification must be viewed as arbitrary." *LSCP, LLLP*, 861 N.W.2d at 860 (citing *RACI*, 675 N.W.2d at 7-8). "If a classification involves extreme overinclusion or underinclusion 'in relation to any particular goal, it cannot [reasonably] be said to . . . further that goal." *Id.* (quoting *Bierkamp*, 293 N.W.2d at 584.) "No constitutional violation results unless 'a classification involves *extreme degrees* of overinclusion and underinclusion in relation to any particular goal." *Id.* (quoting *Bierkamp*, 293 N.W.2d at 584).

AFSCME argues that the definition of "Public Safety Employee" in H.F. 291 is so overinclusive and underinclusive that it cannot possibly further any reasonably conceivable purpose. AFSCME asserts the use of a thirty percent threshold confers "great privileges on a vastly underinclusive class."

In deference to the legislature, a statute will satisfy the requirements of equal protection, "so long as there is a plausible policy reason for the classification, the legislative facts on which the classification is apparently based rationally may have been considered to be true by the governmental decisionmaker, and the relationship of the classification to its goal is not so attenuated as to render the distinction arbitrary or irrational." *Varnum*, 763 N.W.2d at 879. "[C]ourts are compelled under rational-basis review to accept a legislature's generalizations even when there is an imperfect fit between means and ends. A classification does not fail rational-basis review because it 'is not made with mathematical nicety or because in practice it results in

some inequality.'" *Heller v. Doe,* 509 U.S. 312, 321 (1993)(quoting *Dandridge v. Williams*, 397 U.S. 471, 485 (1970).

While AFSCME can reasonably disagree with the public policy decision of the elected branches regarding public sector bargaining rights, it is for the legislature to determine the reasonable extent of collective bargaining rights for all public employees including public safety employees. The Court can interfere only upon a finding that the decision of the legislature lacks any rational relationship to a legitimate public purpose. "Rational basis review in equal protection analysis is not a license for the courts to judge the wisdom, fairness, or logic of legislative choices." *Connolly v. McCall*, 254 F.3d 36, 42 (2d Cir. 2001).

The relationship of the legislative classification to its public purpose is a matter of legislative line-drawing. The Court does not agree with the State's contention that the line drawn by the legislature at thirty percent PSE is "virtually unreviewable" under the rational basis test of Art. I § 6 of the Iowa Constitution. But see *Beach*, 508 U.S. at 316. However, even though our rational basis test is more rigorous in Iowa, judicial deference is owed to reasonable legislative decisions that are not palpably arbitrary. *Varnum*, 763 N.W.2d at 575.

The Court does not find this classification to be palpably arbitrary or irrational. *LSCP, LLLP*, 861 N.W.2d at 856. While the fit between the legislative goal of attracting and retaining a secure corps of Public Safety Employees may not be perfect, the relationship of this end to the means of establishing a thirty percent threshold is not so attenuated as to render the distinction between PSEs and other public employees arbitrary. *Quest Corp.*, 829 N.W.2d at 558. The decision of the legislature to reduce collective bargaining rights for all public employees except collective bargaining units with thirty percent or more Public Safety Employees is rationally

related to the legitimate public purpose of protecting the public by preserving a reliable corps of law enforcement officials to protect public safety in case of emergency.

CONCLUSIONS OF LAW

Potential instability resulting from a reduction of public sector collective bargaining rights could reasonably create a rationally credible concern regarding the effectiveness of law enforcement in the event of an emergency. A reasonable legislature could rationally conclude it is necessary to preserve the rights of collective bargaining units of at least thirty percent Public Safety Employees in order to preserve a reliable corps of law enforcement authorities to deal with emergencies. The legislature could rationally establish as a priority the preservation of a satisfied, well-trained and experienced corps of Public Safety Employees. The purpose of the classification is realistically conceivable. It has a credible basis in fact. The relationship between the classification and the purpose of retaining a stable public safety force is not so weak as to be arbitrary. *RACI*, 675 N.W.2d at 7-8.

Applying the rigorous rational basis test of Art. I § 6 of the Iowa Constitution, the Court concludes AFSCME failed to negate every reasonable basis for the classification that might support disparate treatment between units thirty percent or more PSEs and units of less than thirty percent PSEs. There is a rational basis for this legislative classification. The presumption of constitutionality prevails. H.F.291 does not violate the Equal Protection Clause of the Iowa Constitution. *Id.*

RULING AND ORDER

NOW THEREFORE IT IS HEREBY ORDERED ADJUDGED AND DECREED:

Plaintiffs' Motion for Summary Judgment is overruled. Defendants' Motion for Summary Judgment is sustained.

Plaintiffs' Amended Petition is hereby dismissed.

Plaintiffs shall pay the court costs.

It is so ordered.

State of Iowa Courts

Type: OTHER ORDER

Case Number	**Case Title**
CVCV053572	AFSCME IOWA COUNCIL 61 VS STATE OF IOWA

So Ordered

Arthur E. Gamble, Chief District Judge,
Fifth Judicial District of Iowa