IN THE IOWA DISTRICT COURT FOR POLK COUNTY

IOWA STATE EDUCATION ASSOCIATION and DAVENPORT EDUCATION ASSOCIATION, **Plaintiffs,** **vs.** **STATE OF IOWA, et al.,** **Defendants.**	**CASE NO. CVCV 53887** **RULING ON MOTIONS FOR SUMMARY JUDGMENT**

A contested hearing on the parties' cross-motions for summary judgment was held before the undersigned on August 25, 2017 as previously scheduled. Upon consideration of the arguments made at the hearing, and having reviewed the file and being otherwise duly advised in the premises, the court rules as follows:

The plaintiffs have brought the present action in an effort to challenge the constitutionality of recent legislative enactments pertaining to the Public Employment Relations Act (Iowa Code chapter 20). See Acts 2017 (87th G.A.) ch. 2, H.F. 291, §§1, 6, 9, 12-14, 22 (eff. February 17, 2017) (hereinafter collectively referred to as "H.F. 291"). Specifically, the plaintiffs urge the following theories: 1) the provisions in H.F. 291 that limit collective bargaining rights for bargaining units containing less than 30 percent "public safety employees" violate the equal protection provisions found at Article I, Section 6 of the Iowa Constitution;[1] 2) the prohibition of the use of payroll deduction for payment of "employee organization" dues, while continuing to allow such payment for

[1] The plaintiffs have referred to this provision in their filings as the "Uniformity Clause." This court will follow the lead of the Iowa Supreme Court in referring to it as "the equal protection clause of the Iowa Constitution." See Qwest Corp. v. Iowa State Bd. of Tax Review, 829 N.W.2d 550, 557 n.4 (Iowa 2013); King v. State, 818 N.W.2d 1, 22 n. 18 (Iowa 2012).

dues connected with professional or trade organizations, is also violative of the equal protection clause of the Iowa Constitution; and 3) the legislation's new requirements to certify, retain and decertify an employee organization is a violation of the substantive due process rights of the plaintiffs and their individual members. Both sides have filed motions for summary judgment on the basis that the constitutionality of H.F. 291 presents purely legal issues for the court to resolve on what is conceded to be a record devoid of factual issues.[2]

The procedural standards regarding summary judgment are well settled in Iowa. It is the moving party's burden to establish both the absence of any material factual issues and its entitlement to judgment as a matter of law. IowaR.Civ.P. 1.981(3); Sallee v. Stewart, 827 N.W.2d 128, 132-133 (Iowa 2013). In determining whether this burden has been met, the court reviews the record in a light most favorable to the nonmoving party, who is entitled to every legitimate inference that reasonably can be deduced from the evidence, Bass v. J.C. Penney Co., Inc., 880 N.W.2d 751, 755 (Iowa 2016). Summary judgment is inappropriate if reasonable minds can differ on how the issue should be resolved, even when the facts are undisputed. Frontier Leasing Corp. v. Links Engineering, LLC, 781 N.W.2d 772, 775-76 (Iowa 2010). However, there is no fact issue if the only dispute concerns the legal consequences flowing from undisputed facts; in that instance, summary judgment would be appropriate. Baker v. Iowa City, 867 N.W.2d 44, 51 (Iowa 2015).

Summary of H.F. 291. As noted above, H.F. 291 contains a number of amendments to chapter 20 of the Public Employment Relations Act, summarized as follows: First, the scope of negotiations and the procedures to resolve any impasses in

[2] Such challenges have even been allowed in the context of a pre-answer motion to dismiss. Id. at 28.

those negotiations through arbitration are significantly limited for those bargaining units that do not have at least thirty percent of members who are public safety employees. See H.F. 291 at §6, 12; Iowa Code §20.9(1), (3); 20.22(3), (7), (8)(b), (9)(b) (2017). "Public safety employee" is defined within H.F. 291 to include the following public employees: 1) a sheriff's regular deputy; 2) a marshal or police officer of a city, township, or special-purpose district or authority who is a member of a paid police department; 3) 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; 4) a conservation officer or park ranger as authorized by section 456A.13; 5) 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; and a peace officer designated by the department of transportation under section 321.477 who is subject to mandated law enforcement training. H.F. 291 at §1; Iowa Code §20.3(10A) (2017).

Second, all public employees are prohibited from using payroll deduction for payment of membership dues to an employee organization as defined in Iowa Code §20.3. H.F. 291 at §22; Iowa Code §70A.19. An "employee organization" is defined as "an organization of any kind in which public employees participate and which exists for the primary purpose of representing employees in their employment relations." Iowa Code §20.3(4) (2017). The use of payroll deduction for payment of membership dues or

fees related to a "professional or trade organization" is unaffected by H.F. 291. See Iowa Code §70A.17A(1) (2017).[3]

Finally, H.F. 291 changes the procedures and thresholds regarding the certification process for an employee organization. Prior to the passage of H.F. 291, certification was allowed when a majority of the votes cast were in favor of being represented by the organization; H.F. 291 now requires that the majority of the members of the unit be in favor of being so represented. H.F. 291, §9; Iowa Code §20.15(1)(b) (2017).[4] In addition, H.F. 291 creates a new automatic procedure for the retention and recertification of a bargaining representative prior to the expiration of the existing collective bargaining agreement; this election must take place between June 1 and November 1 of the year prior to the expiration date of the bargaining agreement (or between 270 days and 365 days prior to expiration). H.F. at §9; Iowa Code §20.15(2) (2017). If a majority of the membership does not vote in favor of retention and recertification, the representative shall be immediately decertified, subject to a subsequent petition for certification. Id.[5]

Equal protection analysis. Article I, section 6 of the Iowa Constitution reads as follows:

> All 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.

[3] The phrase "professional or trade organization" does not appear to be a defined term in the Code.
[4] Further, in the event of multiple organizations being on the ballot, the failure of a particular organization to receive a vote total greater than the majority of the members of the unit automatically results in no representation; the prior procedure would have required a runoff election between the two organizations which received the most votes. Id.; Iowa Code §20.15(1)(b)(3) (2017).
[5] Such subsequent petition for certification cannot be filed until at least two years have elapsed from the election in which the representative was either not certified or decertified. Id.; Iowa Code §20.15(1)(c) (2017).

Iowa Const., art. I, §6. Like its federal counterpart, the Iowa equal protection clause "is essentially a direction that all persons similarly situated should be treated alike." Qwest, 829 N.W.2d at 558 (quoting Varnum v. Brien, 763 N.W.2d 862, 878 (Iowa 2009)). LSCP, LLLP v. Kay-Decker, 861 N.W.2d 846, 858 (Iowa 2015); Qwest, 829 N.W.2d at 558. The parties agree that the analysis required under the equal protection clause of the Iowa Constitution in the present case requires a rational basis test, in that neither a fundamental right nor a classification based on race or national origin is at issue. Judicial Branch and State Court Adm'r v. Iowa Dist. Court for Linn County, 800 N.W.2d 569, 579 (Iowa 2011).

The rational basis test has been generally described as "a very deferential standard." NextEra Energy Resources LLC v. Iowa Utilities Bd., 815 N.W.2d 30, 46 (Iowa 2012); but see Varnum, 763 N.W.2d at 879 (rational basis test, albeit deferential, "is not a toothless one in Iowa"). A statute meets the requirements of the rational basis test as follows:

> 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. (quoting Varnum, 763 N.W.2d at 879). The claimed state interest must be realistically conceivable, or in other words credible (a synonym for "plausible"). Qwest, 829 N.W.2d at 560 (citations omitted); Racing Ass'n of Central Iowa v. Fitzgerald (RACI II), 675 N.W.2d 1, 7 n. 3 (Iowa 2004). This requirement "implicitly rejects a purely superficial analysis and implies that the court is permitted to probe to determine if the constitutional requirement of some rationality in the nature of the class singled out has

been met." Qwest, 829 N.W.2d at 560 (citation omitted). A legitimate interest can be any reasonable justification, not just the one the legislature actually chose. LSCP, 861 N.W.2d at 858. To be realistically conceivable, the legislation cannot be so overinclusive and underinclusive as to be irrational. Residential and Agricultural Advisory Committee, LLC v. Dyersville City Council, 888 N.W.2d 24, 50 (Iowa 2016). In this regard, the degree of overinclusion or underinclusion that is required has been described as "extreme…in relation to any particular goal." LSCP, 888 N.W.2d at 861; see also Ames Rental Property Ass'n v. City of Ames, 736 N.W.2d 255, 260 (Iowa 2007) ("If the classification has some reasonable basis, it does not offend the constitution simply because the classification is not made with mathematical nicety or because in practice it results in some inequality") (internal quotation marks omitted).

Should the policy reason be found plausible, the court then must decide whether it has a basis in fact. Qwest, 829 N.W.2d at 560. This does not require "proof" in the traditional sense, but "does indicate that the court will undertake some examination of the credibility of the asserted factual basis for the challenged classification rather than simply accepting it at face value." Id. (quoting RACI II, 675 N.W.2d at 8 n.4). The government is not required or expected to produce evidence to justify its actions; to the contrary, the legislation is presumed constitutional and the plaintiffs must negate every reasonable basis upon which the classification may be sustained. Residential, 888 N.W.2d at 50; King, 818 N.W.2d at 28. This obligation has been consistently labelled as a "heavy burden." See, e.g., Qwest, 829 N.W.2d at 558; NextEra, 815 N.W.2d at 46; Varnum, 763 N.W.2d at 879. "We will not declare something unconstitutional under the rational-basis

test unless it clearly, palpably, and without doubt infringes upon the constitution." Residential, 888 N.W.2d at 50 (internal quotation marks and brackets omitted).

Finally, the court must consider whether the relationship between the classification at issue and the purpose of the classification is so weak that the classification must be viewed as arbitrary. Qwest, 829 N.W.2d at 560; see also King, 818 N.W.2d at 28 ("The classification is valid unless the relationship between the classification and the purpose behind it is so weak the classification must be viewed as arbitrary or capricious") (internal quotation marks and citation omitted). A desirable legislative goal would still be violative of equal protection if "achieved…through wholly arbitrary classifications or otherwise invidious discrimination." RACI II, 675 N.W.2d at 9. On the other hand, the fit between the means chosen by the legislature and its objective need only be rational, not perfect. LSCP, 861 N.W.2d at 859:

> The problems of government are practical ones and may justify, if they do not require, rough accommodations—illogical, it may be, and unscientific. But even such criticism should not be hastily expressed. What is best is not always discernable; the wisdom of any choice may be disputed or condemned. Mere errors of government are not subject to our judicial review. It is only its palpably arbitrary exercises which can be declared void [pursuant to equal protection guarantees].

RACI II, 675 N.W.2d at 23 (Cady, J., dissenting) (quoting Metropolis Theatre Co. v. City of Chicago, 228 U.S. 61, 69–70, 33 S.Ct. 441, 443, 57 L.Ed. 730, 734 (1913).

Substantive due process analysis. Substantive due process principles preclude the government from engaging in conduct that shocks the conscience, or interferes with rights implicit in the concept of ordered liberty. King, 818 N.W.2d at 31; Zaber v. City of Dubuque, 789 N.W.2d 634, 640 (Iowa 2010). A substantive due process analysis

ordinarily begins with an identification of the nature of the right at issue, as that determines the test to be applied. See id.; State ex rel. Miller v. Smokers Warehouse Corp., 737 N.W.2d 107, 111 (Iowa 2007). Once again, that issue is not a point of contention between the parties in the present litigation, as all sides agree that the right of public employees to select and retain bargaining representatives is not a fundamental right for purposes of this analysis. Accordingly, the state only has to satisfy the rational basis test. King, 818 N.W.2d at 31. That test requires that there need only be a reasonable fit between the legislature's purpose and the means chosen to advance that purpose. Id. The evaluation undertaken by the court under the rational basis test is similar for both equal protection and due process. Id. at 32. As in the case of an equal protection analysis, the legislation at issue is presumed constitutional when determining whether a rational basis exists and the parties challenging it on that basis must negate every reasonable basis upon which the government's act may be sustained. Id.; Zaber, 789 N.W.2d at 640. Similarly, a party making a substantive due process challenge also has a heavy burden, in that "substantive due process is reserved for the most egregious governmental abuses against liberty or property rights." Blumenthal Inv. Trusts v. City of West Des Moines, 636 N.W.2d 255, 265 (Iowa 2001) ("A substantive due process violation is not easy to prove") (quoted in Zaber, 789 N.W.2d at 640).

Application of analyses.

Two-class structure for collective bargaining rights. The state has proffered three rationales for the legislature's decision to classify public employee bargaining rights based on the percentage of public safety employees in the bargaining unit at issue: 1) public safety employees should be allowed to maintain their bargaining rights because of

the risks posed in the event they undertook a work stoppage in response to being included in H.F. 291; 2) should other public employees go on strike in response to H.F. 291, it would fall upon public safety employees to enforce the law in the ensuing labor unrest; and 3) public safety employees face difficult and unique safety issues that require that they continue to be allowed to bargain on issues like health insurance.

The first two rationales both stem from the same premise; namely, that a work stoppage of some sort may result as a response to the changes implemented in H.F. 291. The court is willing to concede that this scenario is plausible in the abstract. The primary, if not singular, justification for these rationales is the experience of the state of Wisconsin when it implemented similar changes in its public employee bargaining system:

> We agree that Wisconsin reasonably concluded that the public safety employees filled too critical a role to risk such a stoppage….And experience has borne out the state's fears: in the wake of Act 10 [Wisconsin's version of H.F.291]'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, while the state avoided the large societal cost of immediate labor unrest among public safety employees. Wisconsin was free to determine that the costs of potential labor unrest exceeded the benefits of restricting the public safety unions.

Wisconsin Educ. Assoc. Council v. Walker, 705 F.3d 640, 655 (7th Cir. 2013). In addition, the court is willing to conclude that the manner in which the Iowa legislature has crafted the classification at issue (whether a bargaining unit has at least 30 percent of its members within the defined term "public safety employees") is not arbitrary, even though the definition of "public safety employee" both includes employees who may not reasonably be called upon to serve in the manner contemplated, and excludes employees

who could reasonably be called upon to respond to the aforementioned labor unrest. The Seventh Circuit also dealt with this issue and found the classification in Walker to pass constitutional muster in this regard:

> Thus, we cannot, as the Unions request, determine precisely which occupations would jeopardize public safety with a strike. Even if we accept that Wisconsin imprudently characterized motor vehicle inspectors as public safety employees or the Capitol Police as general employees, invalidating the legislation on that ground would elevate the judiciary to the impermissible role of supra-legislature ….Distinguishing between public safety unions and general employee unions may have been a poor choice, but it is not unconstitutional.

Id. at 656; see also Gregory v. Second Injury Fund of Iowa, 777 N.W.2d 395, 404 (Iowa 2010) ("[S]uch line drawing is not up to courts, but is done by the legislature").

Where the analysis becomes more involved is regarding the need to establish a factual basis for the classification, or in other words, whether the premise for the classification (labor unrest in response to H.F. 291) has a basis in fact. As noted above, this prong of the rational basis analysis requires that the court examine the credibility of this premise rather than merely take it at face value. See Qwest, 829 N.W.2d at 560. The source of any claimed factual basis can come from the record before the court or from "common knowledge," RACI II, 675 N.W.2d at 11, 14, but a record is not necessarily required. King, 818 N.W.2d at 39 ("The [rational basis] analysis does not require a factual basis drawn from the record in the case"). Regardless, the court does have sufficient information within the present record to conclude that the fear of repeating Wisconsin's experience is an appropriate factual basis for the classification at issue.

As the plaintiffs clearly point out, since Iowa's enactment of the Public Employment Relations Act in 1974, there has not been a strike by public employees in

this state. The plaintiffs go on to argue that this is due to the far-reaching and strict penalties already baked into Iowa's collective bargaining legislation that effectively makes a public employee strike unlikely, if not impossible. These penalties include 1) the ability to obtain an injunction restraining a violation or imminent violation of the statutory prohibition against striking (without the need to prove irreparable harm or to post a bond); 2) the failure to comply with such injunction being treated as a contempt under chapter 665 of the Iowa Code, punishable by a daily fine of $500 for each individual found to be in contempt (or $10,000 per day for any employee organization found to be in contempt) and/or imprisonment of up to six months in jail; 3) any public employee found to be in violation of the statutory prohibition or in contempt shall be immediately discharged from his employment and "shall be ineligible for any employment by the same public employer for a period of twelve months;" and 4) any employee organization found to be in violation or contempt shall be immediately decertified, shall cease to represent the bargaining unit, shall cease to receive dues and may only be recertified after twelve months has elapsed from the effective date of decertification. Iowa Code §20.12(3)-(5) (2017).

Iowa's statutory scheme to ensure compliance with its prohibition against public employee strikes as set out in Iowa Code §20.12 is admittedly more severe than the potential sanctions set out in Wisconsin's counterpart. For instance, an injunction is only available in Wisconsin once a prohibited strike has commenced, not when it is imminently threatened. Wis.Stat.Annot. §111.70(5)(7m) (2017). The penalty for individuals violating an injunction after a strike has commenced is only $10 per day. Id. at §111.70(5)(7m)(c)(2). While an organization can be fined as much as $10,000 per day

it is in violation, the fine is dependent on the size of the organization; an organizational violation is subject to a daily fine of $2 per member, up to a maximum of $10,000 per day. Id. at §111.70(5)(7m) (c)(1). There is no counterpart in the Wisconsin statutory scheme for the immediate discharge and ineligibility from future employment for one year for an employee found to be in violation of the statutory prohibition from striking. But see Hortonville Educ. Ass'n v. Hortonville Joint School Dist. No. 1, 87 Wis.2d 347, 356, 274 N.W.2d 697, 702 (1979) (school board entitled to treat teachers' strike as an abandonment of their employment). Finally, a Wisconsin labor organization found to be in violation of the prohibition against striking may not collect dues from its members for one year, but is not subject to decertification as it would in Iowa.

It is not for this court to decide whether the decades of freedom from public employee strikes enjoyed in Iowa is the result of its statutory sanctions for violating this prohibition, or perhaps happenstance; likely, it is not for this court to parse the respective statutory schemes in Iowa and Wisconsin to resolve whether they are comparably punitive in dealing with a potential illegal strike by public employees. What the record before the court does show is that Wisconsin's example is a valid justification to conclude that even when potentially stringent penalties are available to enforce a no-strike provision implemented by the legislature, strikes can and may still occur. As a result, the court concludes that the claimed justification for the enactment of the dichotomy in bargaining rights contained within H.F. 291 has a basis in fact. That classification is therefore upheld as not violative of the equal protection clause of the Iowa Constitution.[6]

[6] Because of this conclusion, the court need not entertain the alternative justification for H.F. 291; namely, that public safety employees are exposed to greater risks to their health and safety.

Elimination of payroll deduction for employee organization dues. It is well settled that the state is not required to allow for the payroll deduction of fees, even if that convenience aids the affected organization's ability to engage in its activities:

> While publicly administered payroll deductions for political purposes can enhance the unions' exercise of First Amendment rights, Idaho is under no obligation to aid the unions in their political activities. And the State's decision not to do so is not an abridgment of the unions' speech; they are free to engage in such speech as they see fit. They simply are barred from enlisting the State in support of that endeavor.

Ysursa v. Pocatello Educ. Ass'n, 555 U.S. 353, 359, 129 S.Ct. 1093, 1098, 172 L.Ed.2d 770 (2009); see also South Carolina Educ. Ass'n v. Campbell, 883 F.2d 1251, 1257 (4th Cir. 1989) ("[T]he First Amendment does not impose an affirmative obligation on the state to assist the program of the association by providing payroll deduction services"); Arkansas State Highway Employees Local 1315 v. Kell, 628 F.2d 1099, 1102 (8th Cir. 1980) ("Although [the failure to continue withholding dues] may impair the effectiveness of the union, this type of impairment…is not one that the First Amendment prohibits"). As the First Amendment is not implicated in the present case, the parties agree that the rational basis test as outlined above is the appropriate analysis to determine whether the prohibition of the use of payroll deduction by employee organizations contained within H.F. 291 is violative of the equal protection clause of the Iowa Constitution. See Campbell, 883 F.2d at 1263; Hearst Corp. v. Iowa Dep't of Revenue and Finance, 461 N.W.2d 295, 305 (Iowa 1990).[7]

[7] This also disposes of the plaintiffs' argument that the prohibition against payroll deduction for employee organization dues should be scrapped as violative of the public policy contained within Iowa Code chapter 20 in favor of collective bargaining. See Iowa Code §20.1(1) (2017) ("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…").

In applying this test to the classification created by the legislature regarding payroll deduction of dues, the state argues that the legislature was justified in doing so because it deemed collective bargaining to be "less worthy of support" than the activities of those organizations for which payroll deduction is still allowed. Ultimately, this lack of support is based on the state's contention that collective bargaining is "expensive, disruptive and not in the best interest of citizens." In response, the plaintiffs argue that such a position cannot be reconciled with the state's policy expressed in Iowa Code §20.1 ("to promote harmonious and cooperative relationships between government and its employees by permitting public employees to organize and bargain collectively"). Iowa Code §20.1(1) (2017).

The fiscal interests of the government are routinely accepted as a rational basis for legislative activity that is viewed as a cost-saving measure for the public. See, e.g., Edwards v. Valdez, 789 F.2d 1477, 1483 (10th Cir. 1983) ("It has become established that [ease of administration and preservation of…fiscal integrity] are legitimate governmental concerns"); Adams v. Fort Madison Community School Dist. in Lee, Des Moines and Henry Counties, 182 N.W.2d 132, 141 (Iowa 1970) ("the state has a compelling interest in seeing that [governmental] units are maintained in healthy financial condition"); but see Brian B. ex rel. Lois B. v. Commonwealth of Pennsylvania Dep't of Educ., 230 F.3d 582, 591 (3rd Cir. 2000) (Roth, J., dissenting) ("[While f]iscal integrity is a legitimate goal[, s]tates may not, however, achieve that goal by making invidious or arbitrary distinctions"). The court agrees that the concerns of the legislature regarding the cost of collective bargaining provide a rational basis for making the classification concerning

---

There is no inconsistency between favoring collective bargaining and prohibiting the use of payroll deductions for the collection of union dues, as the cases cited above make clear.

payroll deduction. As the plaintiffs do not appear to challenge the factual basis for this premise, the court concludes that such a basis exists as a matter of "common knowledge." RACI II, 675 N.W.2d at 11, 14.

The distinction drawn in this classification clearly serves the stated goal of fiscal responsibility, in that it applies to all employee organizations, even those who are "favored" in other portions of H.F. 291. The question thus boils down to whether the distinction between employee organizations and other professional or trade associations is anything other than a pretext for the sort of "invidious or arbitrary distinction" disallowed under the equal protection clause. The court cannot make that leap. The case law is clear that the legislature can select winners and losers in the manner it differentiates between organizations:

> We cannot say that denying withholding to associational or special interest groups that claim only some departmental employees as members and that employees must first join before being eligible to participate in the checkoff marks an arbitrary line so devoid of reason as to violate the Equal Protection Clause. Rather, this division seems a reasonable method for providing the benefit of withholding to employees in their status as employees, while limiting the number of instances of withholding and the financial and administrative burdens attendant thereon.

City of Charlotte v. Local 660, Int'l Assoc. of Firefighters, 426 U.S. 283, 288, 96 S.Ct. 2036, 2039-40, 48 L.Ed.2d 636 (1976); see also Campbell, 883 F.2d at 1264. This distinction, as noted earlier, does not run aground of the public policy regarding collective bargaining memorialized in Iowa Code §20.1: while that policy recognizes that collective bargaining may result in "harmonious and cooperative relationships between government and its employees," Iowa Code §20.1(1) (2017), the state is not required to ratify policies that assist in an organization's ability to collectively bargain.

The decision to not allow payroll deductions for employee organizations is no more of an abridgement of that organization's ability to collectively bargain than the impact of such a policy on its ability to engage in protected speech. Ysursa, 555 U.S. at 359, 129 S.Ct. at 1098, 172 L.Ed.2d 770 ("And the State's decision [to not allow payroll deduction] is not an abridgment of the unions' speech; they are free to engage in such speech as they see fit"). The prohibition of payroll deduction for employee organizations contained in H.F. 291 is upheld as not violative of the equal protection clause of the Iowa Constitution.

Certification requirements. The plaintiffs challenge the new voting requirements contained in H.F. 291 as violative of their and their members' substantive due process rights, as contrary to established principles governing elections and constituting an "arbitrary obstacle to the selection and retention of employee representatives for collective bargaining purposes." Ordinarily, it is presumed that any qualified voters who do not participate in an election are presumed to assent to the expressed will of the majority of those actually voting. Cass County v. Johnston, 95 U.S. 360, 369, 234 L.Ed.416 (1877) (provision that a county, city or town shall not be charged as a subscriber to a corporation "unless two-thirds of the qualified voters…shall assent to" required only two-thirds positive votes from those actually voting). This rule controls "unless the law providing for the election otherwise declares." Id. (" Any other rule would be productive of the greatest inconvenience, and ought not to be adopted, unless the legislative will to that effect is clearly expressed"). Here, the legislature has clearly spoken; a majority of the members of a bargaining unit must vote in favor of certification

or recertification in order for it to be valid. In other words, the legislature has flipped the presumption stated in Cass County such that a non-vote is a no vote.

The state argues that this admittedly stringent requirement (as well as the new requirement that an election be automatically held at the end of a collective bargaining term) ensures that the establishment and maintenance of a bargaining unit be the result of overwhelming and regular support of its members, consistent with the legitimate state interest that it not have to participate in the costly exercise of collective bargaining unless and until the unit's members are committed to the process. The court has already concluded that the issue of the cost of collective bargaining is a legitimate state interest justifying the prohibition of payroll deduction. Such concerns are equally rational when used to require overwhelming support for collective bargaining. These thresholds, while presenting considerable challenges to bargaining units as compared to the prior statutory scheme, do not shock the conscience or otherwise operate in a manner that the court considers egregious. King, 818 N.W.2d at 32. As a result, they will be upheld as not violative of the plaintiffs' substantive due process rights. See also Walker, 705 F.3d at 656-57 (recertification requirements found to meet rational basis test for purposes of equal protection analysis).

IT IS THEREFORE ORDERED that the plaintiffs' motion for summary judgment is denied and the defendant's motion for summary judgment is granted.

IT IS FURTHER ORDERED that this action is dismissed with prejudice, at the cost of the plaintiffs.

State of Iowa Courts

Type: OTHER ORDER

Case Number	**Case Title**
CVCV053887	IA STATE EDUCATION ASSO ET AL VS SATE OF IA ET AL

So Ordered

Michael D. Huppert, District Court Judge,
Fifth Judicial District of Iowa