THE RUTGERS UNIVERSITY LAW REVIEW
VOLUME 73 | ISSUE 4 SUMMER 2021

STATE CONSTITUTIONAL LAW—EQUAL PROTECTION—IOWA SUPREME COURT UPHOLDS AMENDMENTS TO PUBLIC EMPLOYMENT RELATIONS ACT, FINDS CONCERNS OF "LABOR PEACE" VALID

AFSCME IOWA COUNCIL 61 V. STATE, 928 N.W.2D 21 (IOWA 2019)

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TABLE OF CONTENTS

I. INTRODUCTION 1246
II. STATEMENT OF THE CASE 1246
III. BACKGROUND 1249
   A. *PERA's Enactment in 1974 and Its Original Terms* 1249
   B. *The 2017 Amendments to PERA and Political and Union Reactions to Passage of House File 291* 1251
   C. *Petitioner AFSCME's Presence Nationwide and in Iowa* 1252
   D. *State and Federal Constitutional Provisions* 1253
IV. THE COURT'S ANALYSIS 1254
   A. *The 2017 PERA Amendments Do Not Violate the Iowa Constitution's Equal Protection Clause and Withstand Rational Basis Review* 1255
      1. The Legislature's Concern for Labor Peace was a Valid and Realistically Conceivable Purpose with a Basis in Fact 1256
      2. The Legislature's Health and Safety Rationale was a Valid and Realistically Conceivable Purpose with a Basis in Fact 1257
      3. The Thirty Percent Threshold Withstands Constitutional Scrutiny 1258
   B. *The 2017 PERA Amendments Do Not Violate the First Amendment Right to Freedom of Association* 1258
   C. *The Dissents* 1259

* J.D., Rutgers School of Law, May 2021.

1. Chief Justice Cady's Dissent 1259
2. Justice Appel's Dissent 1260
V. ANALYSIS AND IMPLICATIONS 1263
VI. CONCLUSION 1265

I. INTRODUCTION

In *AFSCME Iowa Council 61 v. State*, the Iowa Supreme Court considered whether amendments to the Public Employment Relations Act ("PERA") that limited the collective bargaining topics for certain unions violated Iowa's Constitution.[1] Petitioners AFSCME Iowa Council 61 and individual union members challenged amendments to chapter 20 of the Iowa Code,[2] alleging that the amendments violated the equal protection clause of Iowa's Constitution and infringed on their right of freedom of association.[3] This Comment will first examine the factual and procedural history that led to the Iowa Supreme Court's decision in *Iowa Council 61*. Next, this Comment will discuss and compare the majority's analysis with those of the dissents. Lastly, this Comment will argue that, while the majority was reasonably cautious in its concern for the separation of powers doctrine when it upheld the amendments in question,[4] in doing so, the court disregarded the arbitrary overinclusion of other types of employees and underinclusion of all public safety employees. This arbitrariness should have necessarily caused the amendments to fail a rational basis review in violation of Iowa's equal protection laws.

II. STATEMENT OF THE CASE

In 2017, the Iowa legislature enacted House File 291, which amended several provisions of the PERA.[5] These amendments prohibited unions "with less than thirty percent public safety employee[]" members from negotiating on topics outside of "base wages and other matters mutually agreed upon" during collective bargaining.[6] The amendments defined

1. 928 N.W.2d 21, 26 (Iowa 2019). The court rendered this decision in tandem with *Iowa State Educ. Ass'n v. State*, 928 N.W.2d 11, 13 (Iowa 2019), which presented an identical challenge to the 2017 PERA amendments and was filed by unions representing public school employees in Iowa. *Id.*
2. *See generally* IOWA CODE §§ 20.1–.33 (1975).
3. *Iowa Council 61*, 928 N.W.2d at 26.
4. *Id.* at 26, 42.
5. *Id.* at 28.
6. *Id.* at 28–29.

"public safety employees" as most types of law enforcement employees, such as police officers and sheriffs, but excluded others, such as university police and corrections officers.[7] When "compared to other public employees with arguably similar jobs," this definitional exclusion caused many public employees to lose their collective bargaining rights if the union they belonged to was comprised of fewer than thirty percent public safety employees.[8] By contrast, unions whose members were comprised of at least thirty percent public safety employees were permitted to negotiate on a wider array of topics on behalf of all members, even those who did not fit into the statutory definition of a "public safety employee[]."[9]

Petitioners claimed that these amendments were enacted in violation of the equal protection clause of the Iowa Constitution and violated Petitioners' right to freedom of association.[10] Petitioners filed suit against the State and the Public Employment Relations Board ("PERB"), seeking a declaratory judgment and injunctive relief.[11]

Petitioners made two main arguments in their motion for summary judgment. First, Petitioners argued that the amendments violated the Iowa Constitution's equal protection clause because the amendments "unconstitutionally deprive[d] some public employees of rights guaranteed to other, similarly situated public employees."[12] Second, Petitioners asserted that the amendments deprived public safety employees represented by unions with under thirty percent public safety employees of their right to "meaningful collective bargaining, violating their fundamental right to freedom of association," protected by the First Amendment of the United States Constitution.[13] Though Petitioners agreed that rational basis was the proper standard to review the state equal protection challenge, they asked the district court to analyze their freedom of association claim under a strict scrutiny standard.[14] The

7. *Id.* at 28. This definition excludes "university police, probation or parole officers, fraud bureau investigation officers, airport firefighters, corrections officers, and emergency medical services providers." *Id.*

8. *Id.* at 26; *see also* Barbara Rodriguez, *Iowa's Top Attorney Wants to Be Excused from Union Lawsuit*, KSL (Feb. 21, 2017, 3:35 PM), https://www.ksl.com/article/43261902/iowas-top-attorney-wants-to-be-excused-from-union-lawsuit (recognizing that public sector employees represented by unions with under thirty percent public safety employees would lose "most [of their] negotiating rights" as a result of the amendments to PERA).

9. *Iowa Council 61*, 928 N.W.2d at 28.

10. *Id.* at 26.

11. *Id.* at 26, 30.

12. *Id.* at 30.

13. *Id.* at 30, 40.

14. *Id.* at 30–32.

district court declined to do so, and instead subjected both of Petitioners' claims to a rational basis review.[15]

The district court quickly dismissed Petitioners' freedom of association claim, finding that "[p]ublic employees have no constitutionally protected right to organize into unions."[16] On the issue of whether the amendments violated Petitioners' equal protection rights under the Iowa Constitution, the district court found that Petitioners proved that disparate treatment between similarly situated people existed because the amendments "created classifications of winners and losers among similarly situated unionized individuals who are employed by public employers."[17] However, the district court nonetheless found that the equal protection clause of Iowa's Constitution was not violated because the legislature's stated purpose of avoiding public safety strikes was "not so weak as to be viewed as arbitrary."[18]

> [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 [public safety employees] creates some degree of overinclusion an[d] 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.
>
> Therefore, there is a valid, realistically conceivable purpose for the classification that serves the government interest of retaining a reliable force of [public safety employees] 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.[19]

Following this decision, Petitioners appealed directly to the Iowa Supreme Court.[20]

15. *Id.*
16. AFSCME Iowa Council 61 v. State, No. CVCV053572, slip op. at 10 (Iowa Dist. Oct. 30, 2017), *aff'd*, 928 N.W.2d 21 (Iowa 2019).
17. *Id.* at 10–11.
18. *Iowa Council 61*, 928 N.W.2d at 30.
19. *AFSCME Iowa Council 61*, slip op. at 15–16 (citations omitted).
20. *Iowa Council 61*, 928 N.W.2d at 30.

III. BACKGROUND

Because the court considered whether concerns over labor peace legitimized the Iowa legislature's amendments to PERA, the history of the enactment of PERA in 1974 and of public employee labor strikes in Iowa will be chronicled. The terms from the original form of PERA will be compared to the 2017 amendments, and reactions to the passage of House File 291 from the Iowa legislature and local unions will be reviewed. Additionally, the presence of Petitioner AFSCME both within the State of Iowa and nationwide will be examined. Lastly, the state and federal constitutional provisions that Petitioners claimed were violated by the PERA amendments—the equal protection clause of the Iowa Constitution[21] and the First Amendment of the United States Constitution[22]—will be discussed.

A. *PERA's Enactment in 1974 and Its Original Terms*

Iowa passed the Public Employment Relations Act ("PERA") in 1974 after public employees in the state organized several strikes, demanding a law that would secure collective bargaining rights for public employee unions.[23] Codified in chapter 20 of the Iowa Code, PERA established specific rules and regulations for the public employee collective bargaining process and strictly prohibits public employees from striking and picketing.[24] PERA also explicitly permits courts to issue injunctions to prohibit ongoing or anticipated labor strikes, and grants courts the power to impose fines upon and imprison for up to six months any employee who engages in a strike in violation of a court's injunction.[25] In

21. IOWA CONST. art. I, § 6.
22. U.S. CONST. amend. I.
23. *Iowa Council 61*, 928 N.W.2d at 26–27; *see also* Waterloo Educ. Ass'n v. Iowa Pub. Emp. Rels. Bd., 740 N.W.2d 418, 420–21 (Iowa 2007) (explaining that, though by 1974 forty states had mandated collective bargaining for public employees, "Iowa lagged behind in the enactment of public employment collective bargaining legislation" prior to PERA's enactment); DENNIS PROUTY, IOWA LEGIS. FISCAL BUREAU, LFB:IR7LCSA, STATE EMPLOYEE WAGES 3 (1996), https://www.legis.iowa.gov/docs/publications/IR/1033.pdf (noting that the Collective Bargaining Study Committee of 1970 supported enacting PERA to eliminate public employee strikes because they are "always undesirable" and should "be avoided if at all possible.").
24. *Iowa Council 61*, 928 N.W.2d at 26–27; *see also* IOWA CODE § 20.10(3)(h) (2017) (prohibiting public employees and unions from "[e]ngag[ing] in, initiat[ing], sponsor[ing], or support[ing] any picketing that is performed in support of a strike."); *id.* § 20.12(1) (making it "unlawful for any public employee or any employee organization . . . [to] participate in a strike against any public employer.").
25. *Iowa Council 61*, 928 N.W.2d at 27; *see also* § 20.12(3) (permitting courts to issue injunctions if a strike "has occurred or is imminently threatened," and to impose fines of

part because of these statutorily mandated punishments for striking, "[t]here have been no strikes by public employees in Iowa since PERA's enactment in 1974."[26]

Additionally, enactment of PERB, one of the Respondents in *Iowa Council 61*, was statutorily mandated by PERA.[27] PERB acts as the "neutral State agency responsible for administering Iowa's collective bargaining laws."[28]

In its original form, PERA required all unions, regardless of their composition of public safety employee members, to bargain in good faith on "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 and other matters mutually agreed upon."[29]

In the event of an impasse during negotiations, PERA statutorily mandated a procedure to resolve the impasse "through mediation and binding arbitration."[30] Arbitrators were originally required to consider the following in mandatory arbitration proceedings: (1) "[p]ast collective bargaining contracts between the parties"; (2) "[c]omparison of wages, hours and conditions of employment of the involved public employees" against "those of other public employees doing comparable work"; (3) "[t]he interests and welfare of the public"; and (4) "[t]he power of the public employer to levy taxes and appropriate funds for the conduct of its operations."[31] Arbitrators were required to select "the most reasonable offer . . . submitted by the parties."[32]

Prior to the 2017 amendments, PERA was periodically amended to gradually increase collective bargaining rights in the state. In 1975, a

five hundred dollars per day for individuals and ten thousand dollars per day for organizations which violate the statute's no-strike rule).

26. *Iowa Council 61*, 928 N.W.2d at 27; *see generally* THE UNIV. OF IOWA LAB. CTR., "TO PROMOTE HARMONIOUS AND COOPERATIVE RELATIONSHIPS": A BRIEF HISTORY OF PUBLIC SECTOR COLLECTIVE BARGAINING IN IOWA, 1966 TO 2016, at 7 (2016), https://www.iowaaflcio.org/system/files/history_of_ia_public_sector_bargaining.pdf ("There has not been a single public sector strike since [PERA] was enacted in 1974. On this measure, [PERA] has so far achieved a 100% success rate.").

27. *See* IOWA CODE § 20.5(1) (2010) (mandating the establishment of PERB).

28. *Recertification FAQ's*, IOWA PUB. EMP. RELS. BD., https://iowaperb.iowa.gov/recertification-faqs (last visited Mar. 11, 2020).

29. *Iowa Council 61*, 928 N.W.2d at 27.

30. *Id.*

31. *Id.*

32. *Id.* (citing IOWA CODE § 20.22(9) (amended 2017)).

year after its enactment, PERA was amended to require collective bargaining; by 1976, public sector collective bargaining was permitted.[33]

B. The 2017 Amendments to PERA and Political and Union Reactions to Passage of House File 291

House File 291 was enacted in February 2017 after Republicans gained control of both houses of Iowa's state legislature.[34] After the bill was passed, Democrats and union members protested within the statehouse itself.[35] During the roll-call vote for the bill, those in opposition "booed loudly and chanted, 'Shame'" when it became clear the vote would pass.[36] Petitioner AFSCME Iowa Council 61 described passage of the amendments as an "unprecedented attack[] on public service workers," and categorized Iowa as "[g]round zero for attacks on collective bargaining."[37]

Unlike the original form of PERA, which permitted negotiations on a wide range of topics, the 2017 amendments allowed unions with under thirty percent public safety employee members to negotiate only on the topics of "base wages and other matters mutually agreed upon."[38] Under no circumstances would unions with members comprised of under thirty

33. LEGIS. SERVS. AGENCY OF IOWA, FISCAL SERVS. DIV. ISSUE REV., STATE COLLECTIVE BARGAINING IN IOWA 2 (2014), https://www.legis.iowa.gov/docs/publications/IR/17614.pdf.

34. *Iowa Council 61*, 928 N.W.2d at 28; *see also* Shelby Fleig & Robin Opsahl, *In a Victory for Republicans, Iowa Supreme Court Upholds 2017 Law Limiting Public-Worker Unions' Rights*, DES MOINES REG. (May 19, 2019, 8:03 AM), https://www.desmoinesregister.com/story/news/crime-and-courts/2019/05/17/collective-bargaining-iowa-legislature-afscme-61-kim-reynolds-supreme-court-unions/3705134002/; Christina L. Wabiszewski, *Iowa Supreme Court Upholds Amendments Narrowing Bargaining Rights for Public Sector Unions*, OGLETREE DEAKINS (June 10, 2019), https://ogletree.com/insights/2019-06-10/iowa-supreme-court-upholds-amendments-narrowing-bargaining-rights-for-public-sector-unions/ (explaining that "[w]hen Iowa's newly elected Republican legislature assumed office following the 2016 election, it quickly passed amendments to PERA.").

35. Fleig & Opsahl, *supra* note 34; *see also* William Petroski & Brianne Pfannenstiel, *Iowa House, Senate Approve Sweeping Collective Bargaining Changes*, DES MOINES REG. (Feb. 16, 2017, 8:20 PM), https://www.desmoinesregister.com/story/news/politics/2017/02/16/amid-marathon-debate-iowa-legislature-barrels-towards-passage-collective-bargaining-bill/97984338/ (noting that, "[d]espite staunch Democratic opposition that fueled three days of contentious debate, the Iowa Legislature . . . gave final approval to a bill that . . . dramatically scale[s] back a four-decades-old collective bargaining law that governs union contract negotiations for the state's public workers," and that, in both chambers of the legislature, no Democrats voted for the bill and six House Republicans joined Democrats to vote against it).

36. Petroski & Pfannenstiel, *supra* note 35.

37. Pete Levine, *Lessons from Iowa*, AFSCME (Aug. 15, 2017), https://www.afscme.org/blog/lessons-from-iowa.

38. *Iowa Council 61*, 928 N.W.2d at 29 (quoting IOWA CODE § 20.9(1) (2017)).

percent public safety employees be permitted to bargain over "insurance, leaves of absence for political activities, supplemental pay, transfer procedures, evaluation procedures, procedures for staff reduction, [or] subcontracting public services."[39] While the amendments allowed the permissive negotiation of "pay, shift differentials, and overtime compensation," the decision to engage in negotiation on these topics is left to the discretion of the government employer.[40]

The 2017 amendments also narrowed the scope of negotiations in the event of an impasse between public service employers and unions with under thirty percent public safety employee members.[41] Under the new amendments, even if an offer is reasonable, arbitrators are nonetheless prohibited from accepting offers from unions with fewer than thirty percent public safety employees during negotiations if the offer would increase base wages "that would exceed in any year the increase in a specified consumer price index or three percent, whichever is less."[42] This is in contrast to the original form of PERA which required arbitrators to select "the most reasonable offer . . . submitted by the parties."[43] There is no comparable restriction for unions with more than thirty percent public safety employees.[44]

C. Petitioner AFSCME's Presence Nationwide and in Iowa

AFSCME is the largest public service employee union in the United States, with over 1.6 million active and retired members nationwide.[45] AFSCME is comprised of over 3,400 local unions and operates in forty-six states, the District of Columbia, and Puerto Rico.[46] Petitioner AFSCME Iowa Council 61 is the local chapter of AFSCME that represents Iowa, Missouri, and Kansas.[47]

Individual petitioners were members of AFSCME and held various public service positions: "Johnathan Good, a corrections officer; Ryan De Vries, a police officer; Terra Kinney, a motor vehicle enforcement officer;

39. *Id.* (quoting § 20.9(3)).
40. *Id.* (quoting §§20.9(1), (3)).
41. *Id.*
42. *Id.* at 30 (quoting IOWA CODE § 20.22(10)(b)(1) (2017)).
43. *Id.* at 27 (quoting § 20.22(9) (amended 2017)).
44. *See* § 20.22.
45. *Questions & Answers About AFSCME*, AFSCME 11 (June 2017), https://www.afscme.org/about/AFSCME-WMAH-QA-Booklet.pdf.
46. *Id.* at 15.
47. *Iowa Council 61*, 928 N.W.2d at 30; *see also AFSCME Council 61: We Make Iowa, Missouri, and Kansas Happen*, AFSCME COUNCIL 61, https://www.afscmecouncil61.org/ (last visited Mar. 11, 2020).

and Susan Baker, a drafter."[48] Petitioners submitted their appeal alongside two Iowa public school employee unions, which also challenged the constitutionality of the 2017 PERA amendments.[49] Both decisions were handed down by the court on the same day.[50]

D. State and Federal Constitutional Provisions

Petitioners asserted that the 2017 PERA amendments violated the equal protection clause of the Iowa Constitution,[51] which provides in pertinent part: "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."[52] This clause is a "direction that all persons similarly situated should be treated alike."[53] This section of the state constitution protects against discrimination "by requiring uniform application of laws."[54]

Though the text of this section varies from its federal counterpart,[55] it has nonetheless "been interpreted by [Iowa] courts as being merely an appendage of the equal protection of the laws requirement enunciated in the Fourteenth Amendment."[56] Because of this, state equal protection challenges in Iowa are analyzed under the typical federal equal protection framework.[57] Accordingly, under Iowa's equal protection clause, unless those complaining of unequal treatment are a suspect class, so long as the legislature can provide a rational basis for classifying people in the way that the law in question has, that is "enough to defeat an argument that [the law] violates the principle of equal protection of

48. *Iowa Council 61*, 928 N.W.2d at 30.

49. *Id.* at 26; *see generally* Iowa State Educ. Ass'n v. State, 928 N.W.2d 11 (Iowa 2019).

50. *Iowa Council 61*, 928 N.W.2d at 26.

51. *Id.*

52. IOWA CONST. art. I, § 6.

53. *Iowa Council 61*, 928 N.W.2d at 31 (quoting Varnum v. Brien, 763 N.W.2d 862, 878 (Iowa 2009)).

54. JACK STARK, THE IOWA STATE CONSTITUTION: A REFERENCE GUIDE 41 (G. Alan Tarr ed., 1998).

55. *See* U.S. CONST. amend. XIV, § 1 ("No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States . . . nor deny to any person within its jurisdiction the equal protection of the laws."); *see also* STARK, *supra* note 54, at 42 (explaining that Iowa's equal protection clause "is a variation of the statement about equal protection of the laws in the Fourteenth Amendment of the U.S. Constitution.").

56. STARK, *supra* note 54, at 42; *see, e.g.*, City of Waterloo v. Selden, 251 N.W.2d 506, 509 (Iowa 1977) (recognizing that the equal protection clause of Iowa's Constitution "puts substantially the same limitation on state legislation as does the equal protection clause of the [F]ourteenth [A]mendment to the United States Constitution.").

57. STARK, *supra* note 54, at 38 (suggesting that state equal protection rights in Iowa have "been subsumed by the U.S. Constitution.").

the laws."[58] Though it is not impossible to successfully challenge a law in Iowa on state equal protection grounds, it is also "not difficult to fashion a law that will overcome a challenge based on the argument that it violates the equal protection of the laws principle."[59]

Particularly pertinent to Petitioners' constitutional challenge of House File 291, Iowa's General Assembly is permitted to classify groups of people as it sees fit, so long as there is no "arbitrary and invidious discrimination" among the groups.[60] Iowa courts give the state's General Assembly great deference and will overturn a law on equal protection grounds only if it is "palpably arbitrary" and unjustifiably discriminatory.[61] Unless the challenging party is a suspect class, the law need only meet a rational basis standard of review for disparate treatment among parties to be deemed constitutional in Iowa.[62]

Petitioners also asserted that the 2017 PERA amendments violated their freedom of association protected by the First Amendment of the United States Constitution.[63] The First Amendment provides, in relevant part: the government "shall make no law . . . abridging . . . the right of the people peaceably to assemble."[64] Petitioners failed to assert a state constitutional law claim on this point, though the Iowa Constitution also protects the right of assembly.[65]

IV. THE COURT'S ANALYSIS

The Iowa Supreme Court affirmed the district court's grant of summary judgment and held that the 2017 amendments to PERA were constitutional: neither the equal protection clause of the Iowa Constitution nor the First Amendment to the United States Constitution were violated by the amendments.[66]

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58. *Id.* at 42; *see also Selden*, 251 N.W.2d at 508, 510 (recognizing that Iowa's state legislature has "wide discretion in determining classifications" of people, so long as "a rational relationship is shown between the legislative purpose" of the law in question and the way in which it classifies groups of people).

59. STARK, *supra* note 54, at 38, 42.

60. *Id.* at 38 (explaining that Iowa's General Assembly is permitted to make "certain rules of law apply to one class and other rules apply to another class."); *see also* Sperfslage v. Ames City Bd. of Rev., 480 N.W.2d 47, 49 (Iowa 1992).

61. Lee v. Hoffman, 166 N.W. 565, 568 (Iowa 1918) (quoting Hunter v. Coal Co., 154 N.W. 1037, 1053 (Iowa 1915)).

62. STARK, *supra* note 54, at 38.

63. AFSCME Iowa Council 61 v. State, 928 N.W.2d 21, 40 (Iowa 2019).

64. U.S. CONST. amend. I.

65. *Iowa Council 61*, 928 N.W.2d at 40; s*ee also* IOWA CONST. art. I, § 20 ("The people have the right freely to assemble together . . . to make known their opinions to their representatives and to petition for a redress of grievances.").

66. *Iowa Council 61*, 928 N.W.2d at 26.

In his opinion for the court, Justice Waterman analyzed four principal issues. First, the court reviewed Petitioners' state equal protection claims under a rational basis test.[67] Second, it considered whether the legislature's stated goal for the PERA amendments justified the distinction between unions with at least thirty percent public safety employee members and unions whose members comprised under thirty percent of such employees.[68] Third, the court analyzed whether the legislature's classification of union members was "so overinclusive or underinclusive as to be unconstitutional under [a] highly deferential standard of review."[69] Fourth, the court considered whether the amendments to PERA violated the right of freedom of association protected under the United States Constitution.[70]

A. *The 2017 PERA Amendments Do Not Violate the Iowa Constitution's Equal Protection Clause and Withstand Rational Basis Review*

The court first found that, because Petitioners failed to negate every conceivable basis upon which the 2017 PERA amendments could be upheld, Petitioners' equal protection argument necessarily failed.[71] The court used a three-pronged analysis to review Petitioners' challenge to Iowa's equal protection clause. First, it considered whether the amendments had a "valid, 'realistically conceivable' purpose that served a legitimate government interest."[72] If it could be shown that the amendments were not "so overinclusive and underinclusive as to be irrational," then the amendments could withstand constitutional muster.[73] Second, the legislature's stated reason must have had a "basis in fact."[74] Third and finally, the court evaluated "whether the relationship between the classification and the purpose for the classification 'is so weak that the classification must be viewed as arbitrary.'"[75]

67. *Id.*
68. *Id.*
69. *Id.*
70. *Id.*
71. *Id.* at 40.
72. *Id.* at 32 (quoting Residential & Agric. Advisory Comm., LLC v. Dyersville City Council, 888 N.W.2d 24, 50 (Iowa 2016)).
73. *Id.* (quoting *Residential & Agric. Advisory Comm., LLC*, 888 N.W.2d at 50).
74. *Id.* (quoting McQuistion v. City of Clinton, 872 N.W.2d 817, 831 (Iowa 2015)).
75. *Id.* at 33 (quoting *Residential & Agric. Advisory Comm., LLC*, 888 N.W.2d at 50).

1. The Legislature's Concern for Labor Peace was a Valid and Realistically Conceivable Purpose with a Basis in Fact

Taking on a self-described "limited" role in its rational basis review, the court analyzed whether the legislature's concern for "labor peace . . . among public safety employees" was a reasonably conceivable purpose for the 2017 amendments.[76]

The court held that the legislature's stated goal of "maintaining labor peace [was] a valid, realistically conceivable purpose and ha[d] a basis in fact."[77] Though the majority recognized that there have been no public employee labor strikes in Iowa since the passage of PERA in 1974, it nonetheless found that the legislature could have expanded bargaining rights for unions with at least thirty percent public safety employees to "discourage [employees] from engaging in strikes."[78]

Additionally, the court recognized that, in enacting House File 291, the Iowa legislature may have been informed by the experience in Wisconsin in 2011 when that state's legislature enacted similar restrictions to collective bargaining rights.[79] There, after the state legislature amended Wisconsin's collective bargaining statute and "curtail[ed] public union bargaining rights[,] Wisconsin public employees staged mass protests" and "occup[ied] the rotunda of the state capitol."[80]

Against the backdrop of the events in neighboring Wisconsin, the Iowa Supreme Court found it reasonable for the Iowa legislature to attempt to institute safeguards which would give certain public safety employees expanded benefits so as to lessen the chance that these employees in particular would strike.[81] Moreover, the court agreed with the district court's rationale that, in lieu of strikes, public safety

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76. *Id.* at 33–34.

77. *Id.* at 35.

78. *Id.*

79. *Id.*; *see also* Wis. Educ. Ass'n Council v. Walker, 705 F.3d 640, 641 (7th Cir. 2013). In 2011, the Wisconsin legislature passed essentially identical amendments to those at issue in Iowa. The Wisconsin amendments created two categories of public employees for collective bargaining purposes: "public safety employees" and "general employees." *Id.* As with House File 291, the Wisconsin amendments prohibited general employees from negotiating on topics other than base wages, while public safety employees were permitted to continue negotiating on the original broad range of topics. *Id.*

80. *Iowa Council 61*, 928 N.W.2d at 35; *see also* Shawn Johnson, *Union Changes in Wisconsin Spark Protests*, NPR (Feb. 16, 2011, 3:24 PM), https://www.npr.org/2011/02/16/133814271/union-changes-in-wisconsin-spark-protests (exploring the backlash of the then-proposed amendments to Wisconsin's collective bargaining statute which drew crowds of over 30,000 protestors in Madison in opposition to the bill).

81. *Iowa Council 61*, 928 N.W.2d at 35–36.

employees could engage in "blue flu," a process where law enforcement officials call out sick as a form of protest just short of striking.[82]

In considering the totality of these possibilities, the court held that the Iowa legislature was within its bounds to "rationally decide to extend more beneficial negotiating rights to bargaining units comprised of at least thirty percent public safety employees," even though these aforementioned possibilities were not discussed by the legislature during floor debates over the amendments.[83]

In its holding, the court found that Petitioners did not meet their burden to prove that the amendments violated the equal protection clause of Iowa's Constitution because Petitioners "failed to negate every reasonable basis for the classification that might support [the] disparate treatment between" unions.[84] Instead, the court affirmed the district court's finding that concern for labor peace was a reasonable basis for the classification between unions which were comprised of at least thirty percent public safety employees and unions which were not.[85]

2. The Legislature's Health and Safety Rationale was a Valid and Realistically Conceivable Purpose with a Basis in Fact

The court then turned to whether the "unique health and safety concerns" facing public safety employees were a valid, realistically conceivable purpose for the 2017 amendments.[86] Notably, this was the main topic raised during legislative debate over then-proposed House File 291, and was pointed to as a reason behind the legislature's goal of granting public safety employees broader rights.[87] After referencing instances of law enforcement officers and firefighters in both Iowa and other states dying in the line of duty, the majority concluded that "[i]t is inarguable that the legislature could rationally conclude [that] public safety employees face significantly greater risks to their health and safety than other employees."[88] Accordingly, the court held that these

82. *Id.* at 35–36; *see also* Illya Lichtenberg, *Police Discretion and Traffic Enforcement: A Government of Men?*, 50 CLEV. STATE L. REV. 425, 444–45 (2002) (providing examples of how police departments around the country have used "blue flu" as a collective bargaining strategy).

83. *Iowa Council 61*, 928 N.W.2d at 36.

84. *Id.* at 37–38.

85. *Id.*

86. *Id.* at 34. The district court did not partake in this analysis; the Iowa Supreme Court took the issue on *sua sponte*. *Id.* at 38.

87. *Id.* at 38.

88. *Id.*

risks were a valid, realistically conceivable purpose for the amendments.[89]

3. The Thirty Percent Threshold Withstands Constitutional Scrutiny

Careful not to overstep its judicial bounds, the court noted that, under the proper separation of powers, its role was not to "redraw the legislature's chosen thirty percent threshold."[90] Instead, under a rational basis test, to violate the Iowa Constitution and enable a court to intervene, the distinction in question must involve "*extreme* degrees of overinclusion and underinclusion in relation to [a] particular goal."[91]

Here, the court found that the "Iowa Constitution permits the State to treat public safety employees differently from other public employees and to treat bargaining units comprised of at least thirty percent public safety employees better than bargaining units with a smaller percentage."[92] Moreover, the amendments were facially neutral; Petitioners provided no evidence to the court to suggest that the "thirty percent threshold was chosen to target AFSCME" specifically.[93] The court therefore held that "the thirty percent threshold [was] not so extremely overinclusive or underinclusive as to flunk [the] deferential rational basis review."[94]

In sum, Petitioners unsuccessfully argued that the 2017 amendments to PERA were a violation of the Iowa Constitution's equal protection clause. Providing much deference to the legislature, the court "decline[d] to second-guess the legislature's constitutional policy choices."[95] Because Petitioners "failed to meet their burden of negating every conceivable basis upon which House File 291 could be upheld," Petitioners' equal protection claims failed.[96]

B. The 2017 PERA Amendments Do Not Violate the First Amendment Right to Freedom of Association

Applying a rational basis standard of review, the court held that Petitioners' right to freedom of association was not violated by the 2017

89. *Id.*
90. *Id.* at 39.
91. *Id.* at 40 (quoting Ames Rental Prop. Ass'n v. City of Ames, 736 N.W.2d 255, 260 (Iowa 2007) (emphasis in original).
92. *Id.* at 39.
93. *Id.* at 41.
94. *Id.* at 40.
95. *Id.*
96. *Id.*

PERA amendments.[97] Again, against the backdrop of separation of powers, the court noted that the collective bargaining rights of public employees were for the legislature to outline, not the court.[98]

The amendments in question were facially neutral and were found not to infringe on the right of association.[99] Moreover, because House File 291 did not "prohibit or restrict unions from soliciting members, disseminating materials, engaging in political activities, or expressing their views," nor prohibit employees from joining Petitioner AFSCME's union, the amendments did not violate the First Amendment right of freedom of association.[100] Therefore, the court held that the 2017 amendments to PERA did not infringe on Petitioners' "fundamental right of association."[101]

The district court's grant of summary judgment in favor of Respondents was affirmed.[102] In rendering its holding, the majority noted that Petitioners' discontent with the 2017 PERA amendments was "suitable only for political solution," not judicial intervention.[103] If Petitioners wanted to change the lawfully enacted amendments to PERA, they would be forced to "look to the ballot box."[104]

C. The Dissents

1. Chief Justice Cady's Dissent

Joined by Justice Wiggins, Chief Justice Cady agreed with the majority that concerns over labor unrest amongst public safety employees were a rational basis for the 2017 amendments to PERA.[105] However, the Chief Justice nonetheless found that House File 291 offended the Iowa Constitution, not because its reason for discrimination amongst groups was illegitimate, but because the law gives different rights to public employees based solely on whether the union they belong to has the requisite amount of "public safety" employees needed under the amendments.[106] Doing so effectively strips away the rights of public safety employees who belong to unions with fewer than thirty percent

97. *Id.* at 41–42.
98. *Id.*
99. *Id.*
100. *Id.* at 41.
101. *Id.* at 42.
102. *Id.*
103. *Id.* The court suggested that Petitioners could "attempt to persuade public employers . . . to voluntarily bargain over formerly mandatory terms." *Id.*
104. *Id.*
105. *Id.* at 43 (Cady, C.J., dissenting).
106. *Id.*

public safety employee members, even though the legislature's stated goal was to expand the rights of all public safety employees.[107]

Noting that it can sometimes be difficult to properly draw lines in such cases, Chief Justice Cady found House File 291 to be "not even close to a fair delineation," which therefore fell short of Iowa's state constitutional demands.[108] Because the law purports to grant broader protections to public safety employees, yet simultaneously grants the same protections to non-public safety employees who happen to belong to a union with at least thirty percent public safety employee members, the Chief Justice found the purported justification for the amendments to be constitutionally deficient.[109]

2. Justice Appel's Dissent

In a lengthy and scholarly dissent,[110] Justice Appel found House File 291 to be both overinclusive of other types of employees and too underinclusive of public safety employees as traditionally defined, and additionally found that the legislature's purported concerns about labor unrest were unsupported by fact, because Iowa has had no public employee labor strikes since 1974.[111] In his view, House File 291 should not have survived a rational basis review under the equal protection clause of the Iowa Constitution.[112]

Justice Appel describes the House File 291 amendments as a "remarkable classification system" that "identifies an oddball group of public employees and [then] throws them into the burlap grab bag labeled 'public safety employee[s].'"[113] Some employees "within the grab bag are denied privileges that others receive" while "some public employees not within the grab bag receive the benefits denied to a portion of public safety employees, while others do not."[114] Moreover, the statutory definition of "public safety" employees "astonishingly" includes park

107. *Id.*
108. *Id.*
109. *Id.* at 43–44.
110. *Id.* at 44 (Appel, J., dissenting). Justice Appel has written scholarly opinions and dissents in several state constitutional law cases. *See, e.g.*, King v. State, 818 N.W.2d 1, 49 (Iowa 2012) (Appel, J., dissenting) (arguing that "education is a fundamental . . . right under the Iowa Constitution"); State v. Ingram, 914 N.W.2d 794, 797 (Iowa 2018) (writing for the majority and finding that the Iowa Constitution provides broader protection against warrantless searches and seizures of automobiles than does the United States Constitution).
111. *Iowa Council 61*, 928 N.W.2d at 44 (Appel, J., dissenting).
112. *Id.*
113. *Id.* (quoting IOWA CODE § 20.3(11) (2017)).
114. *Id.* at 44–45.

rangers and gaming enforcement officers, but excludes university police and airport firefighters. Justice Appel points to this hodgepodge of privileges and classifications as evidence of the inherent overinclusive and underinclusive nature of the 2017 amendments, which he describes as "[p]erplexing" and "illogical."[115]

In his dissent, Justice Appel points to the fact that, pursuant to the thirty percent public safety employee threshold of House File 291, a union could have thirty percent public safety employee members, and have a seventy percent supermajority of non-public safety employee members who would nonetheless stand to benefit from the broader collective bargaining rights bestowed upon them by the 2017 amendments.[116] Under this framework, according to Justice Appel, even if the goal of the amendments was to give public safety employees preferential treatment when compared to non-public safety employees, the amendments are nonetheless "way, way overbroad."[117] He cautions: "[m]ake no mistake, House File 291 is really odd."[118]

Justice Appel lays out the approach to a rational basis review under the Iowa Constitution, whereby the statute must be "rationally related to a legitimate state interest."[119] First, "the classes of similarly situated persons treated differently" must be identified.[120] Second, to determine if the end to be achieved is legitimate, a court must consider whether a "valid, realistically conceivable" purpose for the classification exists.[121] Third and finally, a court must determine whether the classification is arbitrary by evaluating the classification's "degrees of overinclusion and underinclusion."[122] Though a rational basis review is deferential to the legislature, that deference "is not . . . necessarily dispositive."[123]

In applying this rational basis standard, Justice Appel first finds that House File 291 treats similarly situated people differently by excluding traditional public-safety employees like university police and airport firefighters from its statutory definition of public safety employees[124] What's more, even those public safety employees that fall within the

115. *Id.* at 45.
116. *Id.* ("[A] supermajority of the beneficiaries [could potentially] not [be] public safety employees!").
117. *Id.*
118. *Id.* at 46.
119. *Id.* (quoting LSCP, LLLP v. Kay-Decker, 861 N.W.2d 846, 858 (Iowa 2015)).
120. *Id.*
121. *Id.* (quoting Residential & Agric. Advisory Comm., LLC v. Dyersville City Council, 888 N.W.2d 24, 50 (Iowa 2016)).
122. *Id.* at 47 (quoting *LSCP*, 861 N.W.2d at 861).
123. *Id.* (quoting *LSCP*, 861 N.W.2d at 859).
124. *Id.* at 47–48.

statutory definition can be treated differently depending on the makeup of members in the union they belong to.[125]

Next, Justice Appel finds that neither labor peace nor the health and safety of public employees provide an adequate basis for the statute.[126] First, Justice Appel submits that there have been no public employee strikes in over forty years in Iowa, nor have any been threatened.[127] Second, he points to the fact that labor peace was not contemplated during floor debate at the Iowa legislature; in Justice Appel's opinion, if labor peace were the true rationale behind House File 291, it would have at least been mentioned during debate.[128] Third, even if a labor strike were to occur in Iowa, PERA in its original form provided for what Justice Appel describes as "draconian sanctions" for those striking in violation of the law, including fines and imprisonment.[129] Therefore, Justice Appel concludes that the concern over labor peace necessarily fails a rational basis review.[130]

Additionally, if House File 291 were concerned with the health and safety of public safety employees, Justice Appel asks why only some public employees are given broader rights under the statute while others have their collective bargaining rights stripped away.[131] If labor peace were the true goal of House File 291, the statute would have included a broader statutory definition of "public safety employees."[132] Accordingly, Justice Appel finds the amendments "arbitrary" in relation to the purported goal of labor peace.[133] Justice Appel also concludes that the purported goal of health and safety of public employees to be similarly arbitrary because it confers privileges on certain public employees, yet denies other public employees those same privileges, even if the latter are in as much or more danger than the former.[134] In his conclusion, Justice Appel argues that "the extreme overinclusiveness and underinclusiveness of [House File 291] is so striking that it does not pass constitutional muster . . . ."[135]

125. *Id.* at 48.
126. *Id.*
127. *Id.*
128. *Id.*
129. *Id.*; *see also* IOWA CODE § 20.12(3).
130. *See Iowa Council 61*, 928 N.W.2d at 48 (Appel, J., dissenting).
131. *Id.* at 48–49 ("Why . . . are park rangers entitled to the health and safety benefits of robust collective bargaining while corrections officers are not?").
132. *See id.* at 49.
133. *Id.*
134. *Id.* at 49–50.
135. *Id.* at 51.

V. ANALYSIS AND IMPLICATIONS

House File 291 was enacted in a purported effort to dissuade public safety employees from striking and to provide those employees with greater collective bargaining rights. However, there have been no public employee labor strikes in Iowa in over forty years,[136] and House File 291 effectively excludes public safety employees from greater collective bargaining rights if they belong to a union with fewer than thirty percent public safety employee members or if enough union members fail to fall into the strict statutory definition of the term "public safety employees."[137] Under this framework, the majority in *Iowa Council 61* incorrectly decided the issue before it. By holding House File 291 to be constitutional, the Iowa Supreme Court permitted the arbitrary restriction of collective bargaining rights among its public safety employees in violation of the Iowa Constitution's equal protection clause.

The State alleged that the legislative intent behind House File 291 was fueled by concerns over labor peace and the health and safety of public safety employees.[138] However, the majority mistakenly took this alleged legislative intent at face value and failed to properly analyze what the legislative history suggests about whether labor peace was a legitimate legislative concern. Moreover, the majority failed to properly analyze whether a statute that divides public safety employees up in a simultaneously overinclusive and underinclusive fashion actually intended to provide greater rights for anyone.

Justice Appel was correct to point out in his dissent that "the historical record [of House File 291] is striking."[139] While debating the then-proposed amendments, the Iowa legislature never claimed that a public employee strike had occurred since PERA was passed in 1974, nor did the legislature suggest that any strikes were likely to happen in the future.[140] In fact, the majority opinion itself recognized that there have been no labor strikes in Iowa since 1974.[141] That the Iowa legislature never mentioned strikes nor labor peace during the floor debates surrounding House File 291 suggests that labor peace could not have been a legitimate rationale of the amendments to PERA in 2017.

Indeed, since 1974, PERA itself has imposed harsh sanctions including monetary fines and imprisonment upon those who violated

136. THE UNIV. OF IOWA LAB. CTR., *supra* note 26, at 7 ("There has not been a single public sector strike since [PERA] was enacted in 1974.").
137. *Iowa Council 61*, 928 N.W.2d at 45 (Appel, J., dissenting).
138. *Id.* at 34 (majority opinion).
139. *Id.* at 48 (Appel, J., dissenting).
140. *See generally id.* at 26–28 (majority opinion).
141. *Id.* at 27.

PERA's ban on labor strikes.[142] Against that backdrop, it would appear that, in its original form, PERA already legitimately and rationally handled any concerns Iowa's legislature could potentially have with respect to labor strikes. It is therefore illogical to suggest that PERA needed amending in the event of a possible labor strike since the statute itself already contemplated the possibility of labor strikes and explicitly made them illegal.[143] Despite this, the court improperly allowed the state to claim that labor peace was a "valid, realistically conceivable"[144] purpose for the classification between workers; a cursory review of the legislative history of House File 291 shows that labor peace was never seriously considered by the legislature.

Moreover, the way in which House File 291 includes certain public safety employees in its statutory definition of "public safety employees" while excluding other positions that would typically fall into the category also suggests that the intent behind the statute was not to promote the health and safety of public safety employees. Common sense and tradition would suggest that employees like university police, airport firefighters, and parole officers would be considered public safety employees. However, House File 291 fails to include these types of typical public safety employees in its statutory definition, thereby excluding these employees and the unions they belong to from the enhanced collective bargaining rights that were the ostensible purpose of House File 291.[145] As argued by Justice Appel in his dissent, this is a direct contradiction to the State's argument that House File 291 was enacted to promote the health and safety of public safety employees.[146] The wording of the statute effectively strips certain public safety employees, like corrections officers and emergency medical services providers, of their collective bargaining rights, while others, like park rangers and state fire marshals, are arbitrarily permitted to retain their original expansive bargaining rights under the statute.[147]

The statute also allows non-public safety employees to take advantage of broad collective bargaining rights so long as the union to which they belong has a minimum of thirty percent public safety employees.[148] This, when paired with the strict statutory definition of

142. *Id.* at 26–27.

143. *See* IOWA CODE §§ 20.12(1), (3) (amended 2017) (imposing fines of five hundred dollars a day, six months in prison, or both to individuals who violate the statute's no-strike rule).

144. *Iowa Council 61*, 928 N.W.2d at 32–34.

145. *See* IOWA CODE § 20.3(11) (2017); *see also Iowa Council 61*, 928 N.W.2d at 28.

146. *Iowa Council 61*, 928 N.W.2d at 44 (Appel, J., dissenting).

147. *See* IOWA CODE § 20.3(11) (2017).

148. *Id.* § 20.9(1).

"public safety employee," shows that House File 291 is both too overinclusive of other types of employees and too underinclusive of public safety employees as traditionally defined to survive an equal protection challenge. The majority failed to give these factors their proper weight when it held that Petitioners failed to refute every possible basis upon which the statute could be sustained.[149] As Justice Appel properly noted, classifying employees in this way is nothing more than "an arbitrary grouping and shuffling of public employees that is overinclusive and underinclusive."[150]

The majority seemed to understand that Petitioners' arguments were not without merit.[151] However, the majority's desire to defer to the legislature appeared to weigh heavily in making its decision.[152] Though the court's deferral to the legislature is well-intentioned, as the separation of powers is fundamental to the American form of government, this deferral was nonetheless misplaced. House File 291 was both overinclusive and underinclusive, such that certain public safety employees were wrongfully excluded from its provisions while other non-public safety employees were arbitrarily permitted to take advantage of its broader collective bargaining rights. Further, PERA in its original form had already prevented labor strikes in Iowa for over forty years and imposes harsh enough sanctions on those who wish to violate the law to sufficiently deter individuals and unions from organizing strikes. Because the amendments should have failed a rational basis review, the court should have reversed the district court's finding, and ruled the amendments unconstitutional.

VI. CONCLUSION

In *AFSCME Iowa Council 61 v. State*, the Iowa Supreme Court upheld amendments to the state's Public Employment Relations Act, finding no state equal protection violation in granting broader collective bargaining rights to unions with at least thirty percent public safety employee members. The court found that the state's interests in labor peace and the health and safety of public safety workers were reasonably

149. *Iowa Council 61*, 928 N.W.2d at 31.

150. *Id.* at 44 (Appel, J., dissenting).

151. *See id.* at 41 (concluding that Petitioners' grievances with House File 291 are better suited to be handled within the legislative branch of the state government than its judicial branch).

152. *Id.* at 26 (majority opinion) (it is not the court's role to "sit as a superlegislature rethinking policy choices of the elected branches."); *see also id.* at 42 (Appel, J., dissenting) ("The plaintiffs . . . must look to the ballot box and the elected branches to change this lawfully enacted statute.").

conceivable goals for the amendments to the statute. However, the court erred in its analysis because it failed to assign adequate weight to the arbitrary nature of the statute and to the fact that there has been no labor unrest in the form of strikes in the State of Iowa since 1974. *Iowa Council 61* was a major hit to Iowa's unions and their members, as it effectively stripped collective bargaining rights away from countless public sector employees in the state.